TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~372~~. 142

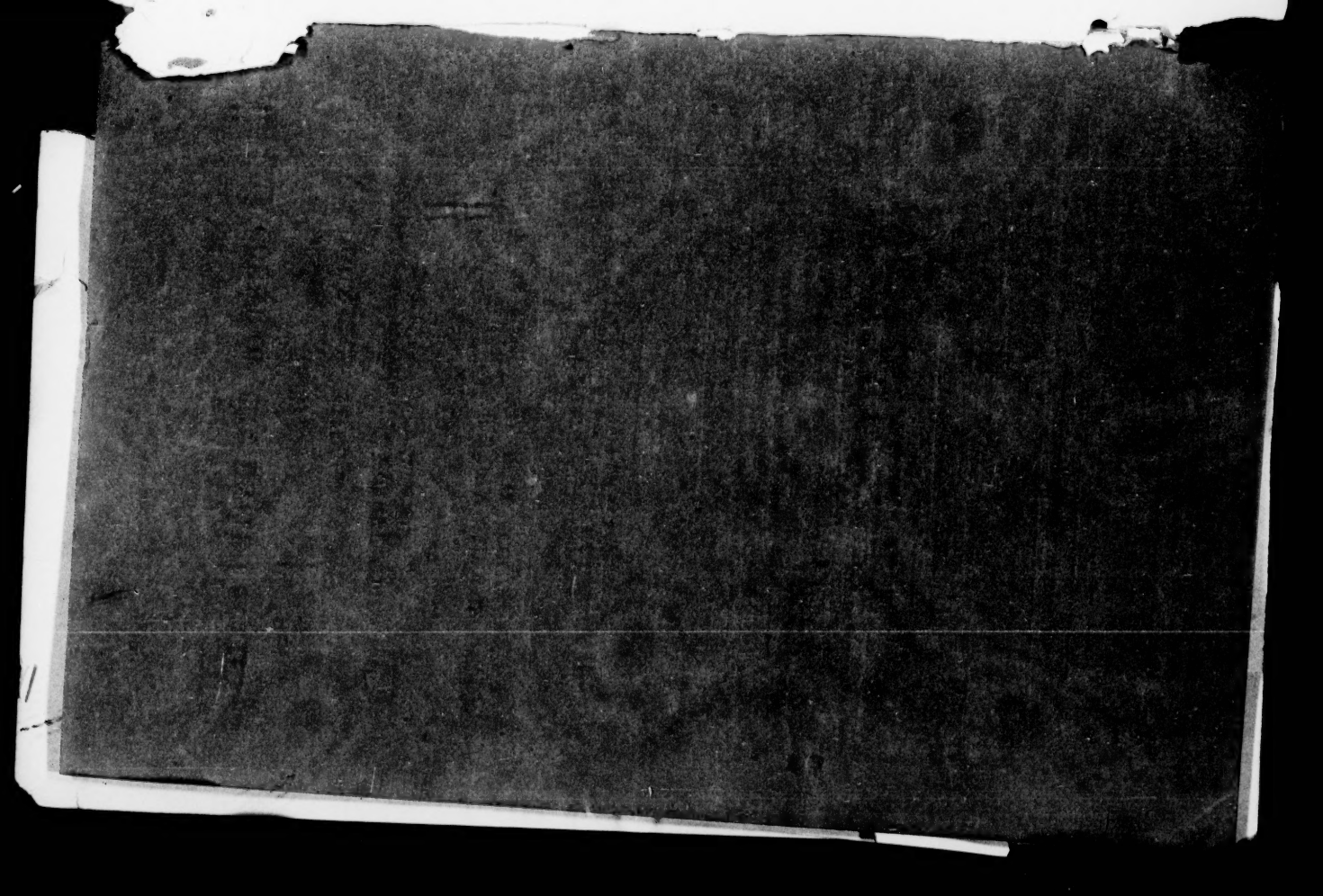
P. DE CORDOVA, ASSIGNEE IN BANKRUPTCY OF ZENAS BARTLETT, APPELLANT,

vs.

MARY HOOD, T. C. HOOD, EXECUTRIX AND EXECUTOR OF H. M. HOOD, SR., DECEASED, L. G. SCOGIN, AND J. S. HANNA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED NOVEMBER 4, 1871.



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1 Circuit court of the United States, 5th circuit, western district of Texas, holding sessions at Austin.

Be it remembered that, at a term of the circuit court of the United States begun and held at Austin, for the January term, A. D. 1871, the following proceedings were had, to wit:

P. DE CORDOVA, ASSIGNEE IN BANKRUPTCY of the estate of Zenas Bartlett, bankrupt, *bankrupt*, complainant,
versus
L. M. HOOD AND MARY HOOD, EXECUTOR and executrix of the last will and testament of H. M. Hood, sen., deceased, and L. G. Scroggin, and J. S. Hanna, defendants. } No. 36. Chancery.

On the 21st day of March, in the year of our Lord one thousand eight hundred and sixty-eight, came the complainant, P. de Cordova, assignee as aforesaid, by his solicitors, Chandler & Carlton, and filed in the clerk's office of said court his bill in equity which is endorsed, to wit:

P. DE CORDOVA, ASSIGNEE, &c.,
vs.
L. M. HOOD ET ALS. } In chancery. No. 36.

Bill in equity. Filed March 21, 1868.

M. HOPKINS, *Clerk.*

2 Which said bill is in the words, to wit:

Bond.—Filed March 21, 1868.

In chancery in U. S. circuit court, west. dist. Texas, at Austin, June term, 1868.

UNITED STATES OF AMERICA, *State of Texas:*

To the hon. judges of the circuit court of the United States for the western district of Texas, sitting at Austin, exercising equity powers:

Humbly complaining unto your honors your orator, P. de Cordova, a resident citizen of the county of Travis, in the western district of Texas aforesaid, assignee in bankruptcy of the estate of Z. Bartlett, bankrupt, exhibits this his bill of complaint as such assignee, for the use and benefit of said bankrupt estate, against L. M. Hood and Mary Hood, resident citizens of the western district of Texas, to wit, the county of Harrison, in their fiduciary capacity, as executor and executrix of the last will and testament of H. M. Hood, s'r, deceased, and against L. G. Scoggin and J. S. Hanna, both of whom are resident
3 citizens of the aforesaid western district of Texas, to wit, the county of Falls. And for cause of complaint, your orator charges that the said H. M. Hood, s'r, in his lifetime, then being a resident citizen of the county of Falls, and district aforesaid, for value received, on or about the 1st day of April, 1860, made, executed, and delivered to one B. G. Shields, his certain promis'ory note in the words and figures substantially as follows, to wit:

"$5,015.] FALLS COUNTY, TEXAS, *April 1st*, 1860.

"On or before the 1st day of April, eighteen hundred and sixty-two, I promise to pay to the order of B. G. Shields the sum of five thousand and fifteen dollars, for value received, payable at the Union Bank, in New Orleans, La.

(Signed) "H. M. HOOD, SEN."

And your orator further charges that the said B. G. Shields, in due course of trade and for a valuable consideration, on or about the day of sold, assigned, and endorsed the aforesaid promis'o'y note, with all equities thereto belonging and appertaining, to the
4 said Z. Bartlett by endorsing on the back thereof the words and figures as follows:

"For value received, I assign, transfer, set over, and deliver the within note, with all the equitable and vendor's lien on the land for the purchase-money for which it was given to Z. Bartlett.

"B. G. SHIELDS."

By reason of all which your orator says that the said H. M. Hood, s'r, became justly indebted, liable, and bound to pay the said Z. Bartlett, the sum of money in said promissory note specified, according to the tenor and effect of the same.

And your orator further charges that the said H. M. Hood, s'r, departed this life, on or about the day of leaving a last will and testament in which he appointed the said L. M. Hood and Mary Hood, executor and executrix of his said last will and testament, and that the said H. M. Hood, s'r, was, at the time of his death, a resident citizen of the county of Washington, in the aforesaid western district of Texas.

5 And your orator further charges that, by the tenor of the said last will and testament, the executor and executrix thereof were relieved from giving security for the faithful performance of their duties, as such executor and executrix; that they were only required to probate said will, take the oath required by law, and return an inventory of the property of the estate.

And your orator further charges that the said defendants, L. M. Hood and Mary Hood, did, at the term of the county court of Washington County, in *in* the State of Texas, present said last will and testament for probate; that the same was duly probated and recorded, and the defendants were appointed by said court as executor and executrix of said last will and testament, and that they then entered upon their duties as such executor and executrix, and took charge of all the property belonging to the estate of said H. M. Hood, s'r.

6 And your orator further charges that the said defendants are now acting in the capacity of and performing the duties of executor and executrix of the last will and testament of said H. M. Hood, s'r, deceased.

And your orator further charges that the said Z. Bartlett, on or about the 10th day of September, 1867, filed his petition in the district court of the United States of America, sitting at Austin, as a court of bankruptcy, for the western district of Texas, and that the said Bartlett was, on the 24th day of September, 1867, on his aforesaid petition adjudged to be a bankrupt, within the meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

And your orator further charges that, at a general meeting of the creditors of the said bankrupt called in pursuance with the aforesaid law, which said meeting was held in the city of Austin, in the western district of Texas aforesaid, on the 6th day of November, A. D. 1867,
7 your orator was duly elected and appointed assignee in bankruptcy of the said bankrupt; and that, on the day last aforesaid, W. D. Price, register in bankruptcy of the aforesaid district court of the United States, did, in the manner prescribed by the aforesaid law, assign and convey to your orator, in his fiduciary capacity as aforesaid, all the estate real, personal, and mixed of the said Z. Bartlett, bankrupt.

And your orator further charges that he did, at the date aforesaid, accept his said trust as assignee, entered upon the duties of his said office, and that he is now, and has been ever since the date last aforesaid, so acting as such assignee.

By reason of all which the said L. M. Hood and Mary Hood, in their fiduciary capacity aforesaid, became, and are now, justly indebted, liable, and bound to pay your orator, in his fiduciary capacity as aforesaid, the sum of money in said promissory note specified, according to the tenor and effect thereof.

And your orator further charges that he is now the legal holder and owner of the aforesaid promissory note; that the same has long
8 since been due and payable, and that neither the defendants nor the said H. M. Hood, sr., in his lifetime, nor either of them, have ever paid your orator, or the said Z. Bartlett, or any one legally entitled to receive the same, the amount of money in said promissory note specified, or any part thereof, although often demanded of them and each of them.

And your orator further charges that, on or about the 5th day of February, 1859, B. G. Shields, the payee of the aforesaid note, and E. A. Shields, sold to the said H. M. Hood, sr., about eighteen hundred acres of land in the county of Falls, in the State aforesaid, for about the sum of twenty-seven thousand dollars; for a better and more accurate description of the locality and field-notes of said tract of land, a certified copy of the deed from the said B. G. Shields and E. A. Shields to the said H. M. Hood, sr., is hereto appended, marked Exhibit
No. 1, and made a part of this bill of complaint; which said sum
9 of twenty-seven thousand dollars was made payable to the said Hood as follows: Four thousand dollars to be paid on the tenth day of May, 1859; five thousand dollars, on the 1st day of January, 1860; nine thousand dollars, on the 1st day of April, 1861, with interest from January 1st, 1860, at the rate of eight per cent. per annum; and nine thousand dollars, on the 1st day of April, 1862, with interest from the 1st day of January, 1860, at the rate of eight per cent. per annum, and for which two last-named payments the said H. M. Hood, sr., executed his two certain promissory notes to the said B. G. Shields.

And your orator further charges that the note hereinbefore set out, described, and declared upon in this bill of complaint, was made, executed, and delivered to the said B. G. Shields by the said H. M. Hood, sr., for, and in the place, and as a part of, the note described in the said Exhibit No. 1, as the note due on the *the* 1st day of April, 1862,
for the sum of nine thousand dollars as a part of the purchase-
10 money for the land described in said deed made a part of this bill, and marked Exhibit No. 1.

And your orator further charges that the amount of said note and in-

terest constitutes a valid vendor's lien on the land described in said exhibit, and that said land is liable in equity for the same.

And your orator further charges that, by virtue of the aforesaid endorsement and transfer by the said Shield to the said Z. Bartlett in the manner aforesaid, the money and interest due on said note, and the vendor's lien passed to the said Bartlett, and by virtue of the aforesaid bankruptcy of the said Bartlett and the aforesaid proceedings had therein, the same has become the legal property of your orator for the uses and purposes aforesaid.

And your orator further charges that, on or about the 22nd day of May, 1863, the said H. M. Hood, sr., pretended to sell and convey the aforesaid tract of land to the defendants L. G. Scogin and J. S.
11 Hanna, a certified copy of which said pretended deed, from the said H. M. Hood, sr., to the said L. G. Scogin and the said J. S. Hanna, is hereto appended, marked Exhibit No. 2, and made a part of this bill of complaint; and the respondents, L. G. Scogin, and J. S. Hanna, are hereby notified to produce the original deed from the said H. M. Hood, sr., on the trial of this suit, or Exhibit No. 2 made a part of this bill will be offered in evidence on the trial of the same.

And your orator further charges that the said L. G. Scogin and J. S. Hanna made said pretended purchase of said land from the said H. M. Hood, sr., with full knowledge, both constructive and actual, that the note and interest hereinbefore set out in this bill, and made the cause of action herein, was given for the purchase money of the land described in Exhibits Nos. 1 & 2, and made a part of this bill of complaint, and that the same, nor any part thereof, had ever been paid.

12 And your orator further charges that, if any supposed or pretended consideration ever did pass from the said Scogin and Hanna, or either of them, to the said H. M. Hood, or any one else, for said land, which is not admitted but expressly denied, then your orator charges that the said pretended or supposed consideration was paid or promised to be paid in a paper currency then in circulation in the State of Texas, known and called Confederate States treasury warrants, commonly called confederate money or Confederate States bonds, or Texas State treasury warrants, commonly called State warrants, or a part in one and part in the other, or part in each, all of which said paper then used for and in the place of money, was then in use, and used solely in aid of the late repellion of the so-called Confederates States, and the several States comprising the so-called Confederate State government in violation of the Constitution and laws of the United States,
13 and contrary to the public policy of the Government thereof, and in fraud of the rights of the creditors of the said Z. Bartlett, who then were, and still are, loyal citizens of the United States. And if not so, then your orator alleges that the contract and agreement made at the time the said Hood, sr., sold, and the said Scogin and the said Hanna pretended to purchase, said tract of land, that the said Scogin and Hanna agreed to give or pay, and the said H. M. Hood, sr., agreed to receive, the aforesaid confederate money or bonds, or State warrants, or part of each, or part in one and part in the others; therefore, your orator charges, for each and all of the reasons and causes hereinbefore alleged, and each of them severally, the said pretended title or *or* claim of the respondents, Scogins and Hanna, is fraudulent and void, as against the superior legal and equitable right of your orator as hereinbefore charged.

And your orator further charges that the claim set up by the
14 respondents, Scogin and Hanna, casts a cloud upon the title

and vendor's lien of your orator, and would prevent the same from selling for an amount sufficient to pay your orator's note and interest and costs. And because your orator has no adequate remedy at law to enforce his aforesaid vendor's lien to secure the payment and satisfaction of his note and interest declared upon in this bill of complaint and the costs of this suit: And now, so it is, may it please your honors, and each and all the respondents in this bill deny the validity of the note here sued on, and the vendor's lien upon the land described in Exhibits Nos. 1 and 2, made a part of this bill of complaint, and each and all their liabilities for the payment of said note and interest.

And your orator further charges that the original deeds described in Exhibits Nos. 1 and 2, and made a part of this bill of complaint, are in the hands of the respondents, or some of them, or under the control of some one or more of them, and beyond the reach or control of your orator; and the said respondents are, each and all of them are hereby notified to produce the originals, to be read in evidence on the final
15 hearing of this suit, or, in default thereof, your orator will offer the aforesaid copies thereof hereto appended, marked Exhibits Nos. and 2, and made a part of this bill of complaint, as evidence of their existence and contents; all of which actings, doings, pretences, and refusals are contrary to equity, good conscience, and tend to the manifest injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the respondents, L. M. Hood and Mary Hood, executor and executrix of the estate of H. M. Hood, sr., deceased, and L. G. Scogin and J. S. Hanna, may full, true, and perfect answers make to all the matters aforesaid, and as fully and particularly as if the same were here repeated, and they and every one of them distinctly interrogated thereto:

May it please your honors to grant unto your orator your most gracious writ of subpœna, directed to the respondents L. M. Hood,
16 Mary Hood, L. G. Scogin, and J. S. Hanna, thereby commanding them at a certain day, and under certain pain therein to be hereinafter personally to be and appear before your honor's court, then and there full, true, direct, and perfect answers make to all and singular the premises, and to further stand, perform, and abide such further order, direction, and decree therein as to your honor shall seem meet. And your orator will ever pray, &c.

Upon the final hearing of this cause, your orator prays for judgment for the amount of the note and interest sued on and costs of suit against the respondents, L. M. Hood and Mary Hood, in their fiduciary capacity, as executor and executrix as aforesaid; and for judgment and decree foreclosing his vendor's lien upon the land described in Exhibits Nos. 1 and 2, made a part of this bill of *of* complaint; and an order to sell the same in satisfaction of said note, interests, and costs, and for all such other judgements and decrees as the nature of the case may require, &c.. &c.

CHANDLER AND CARLETON,
Solicitors for Complainants.

17 And your orator hereby waives the necessity of the respondents, or either or any of them, answering this bill under their oaths.

CHANDLER & CARLETON,
Solicitors for Complainants.

18 THE STATE OF TEXAS, *County of Falls:*

Know all men by these presents I, B. G. Shields, of the State and county aforesaid, have bargained and sold, and by these presents do bargain and sell to H. M. Hood, of the county of , State aforesaid, the tract of land where I now reside, comprising eighteen hundred acres, for the sum of twenty-seven thousand dollars, to be paid to me by said Hood in installments, as follows: Four thousand dollars ($4,000) on the 10th day of May next, in the city of New Orleans, for which the said Hood has given me a draft on R. C. Cumings & Co. of said city, payable at that time; five thousand dollars ($5,000) on the first day of January next, for which he has likewise given me a draft on the same house, payable there; nine thousand ($9,000) on the first day of April, eighteen hundred & sixty-one, with interest at the rate eight per cent. *cent.* per annum from the 12th day of January, 1860, for which he has executed to me his promissory note, negotiable and pay-
19 able at the Union Bank in the city of New Orleans, at the time mentioned; and nine thousand dollars on the first day of April, eighteen hundred and sixty-two, with the same rate of interest from the same time, January, 1860, and negotiable and payable at the same bank in New Orleans.

The tract of herein sold, consisting of two bodies, one of eleven hundred and the other of seven hundred acres, which is contiguous to each other for such extent, and so situated as to constitute one tract in *consistent* form. The boundaries of the eleven-hundred-acre tract are as follows: Beginning at the S. west corner of the tract of four hundred acres hereby , and deeded to G. E. Franks out of the fifteen hundred acres deeded to me by T. J. Chambers on the 13th day of November, 1857; thence by a line south 45 degrees west, to the ; thence down the meanderings of the river, two thousand eight hundred and twenty varas, to a corner; thence north 40 deg. east to the southeast corner of the tract sold to G. E. Franks as aforesaid; thence along southern boundary of said tract to the place of beginning, the length of line being near 1,435 varas. The boundaries of the seven hun-
20 dred are as follows: Beginning at a stake designated as the southwest corner of a tract, 640 acres, surveyed for the site of the town of Marlin; thence by a line south 45 degrees west, to north line of said upper fifteen hundred acres, the distance being near seventeen hundred ten and varas; thence north 45 degrees east to the northeast corner of said fifteen hundred acres; thence south 45 east to the place of beginning.

These two tracts, comprising eighteen hundred acres, I sell and convey by this deed to H. M. Hood for the consideration aforementioned, together with all and singular the *rites*, hereditaments, and appurtenances to the same belonging, or in anywise appertaining: To have and to hold, all and singular the premises aforesaid, unto the said Hood, his heirs and forever; and upon the completion of the payments before mentioned, I do bind myself, executors, and administrators, to warrant and defend the said premises to the said Hood, his heirs, and assigns, against all persons lawfully claiming the same, or any part thereof, and do bind myself to surrender possession of said premises the 1st day of January, eighteen hundred and sixty,
21 (1st day of January, 1860,) reserving the *rite* of cultivating and occupying the same until that date.

In witness whereof I hereunto affix my hand and seal (using scroll for seal) this 5th day of Feb., 1859.

B. G. SHIELDS. [SEAL.]
E. A. SHIELDS. [SEAL.]

THE STATE OF TEXAS, *County of Falls:*

Before me Samu'l D. Bacchry, clerk of the county court in and for said county, personally appeared E. A. Shields & Gen'l B. G. Shields, parties to the foregoing, or writing, bearing date on the 3rd day of Feb., 1859, and having been examined by me privately and apart from her husband, and having the same explained to her, she, the said E. A. Shields acknowledged *to* the same to be her act and deed, and that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it. And I further certify that the said B. G. Shields, husband of E. A. Shields, also acknowledged that he had executed and delivered the said deed on his part for the purposes and considerations therein stated.

In testimony whereof I hereunto set my hand and the seal of the county court, at my office in said county, this 4th day of March, A. D. 1859.

SAMUEL D. BACCHRY,
Clerk C. C. F. C.

21½ THE STATE OF TEXAS, *County of Falls:*

I, A. M. Attaway, clerk of the county court of Falls County, do hereby certify that the above and foregoing is a true and correct copy of a deed made by B. G. and E. M. Shields to H. M. Hood, as *are* shown on the records of this county in book D, page' 356 and '7.

In witness whereof I hereunto set my hand an' the seal of the county court of Falls County, at office, in the town of Bertin, on the 3rd day of January, A. D. 1868.

A. M. ATTAWAY,
Clk C. C. F. C.

22 EXHIBIT No. 2.

THE STATE OF TEXAS, *County of Falls:*

Know all men by these presents I, H. M. Hood, of the county of Harrison, and State of Texas, for and in consideration of the sum of forty-five thousand dollars, to me in hand paid by L. G. Scogin and J. S. Hanna, the receipt whereof is hereby acknowledged, sold, delivered, and conveyed, and by these presents do bargain, sell, release, and convey unto the said L. G. Scogin and J. S. Hanna the following-described tract or parcel of land, lying and being situated on the east side of the Brazos River, in said county of Falls, consisting of two bodies contiguous to each other, one of eleven hundred and the other of seven hundred acres. The boundaries of the eleven hundred is as follows, viz:

Beginning at the S. W. corner of a tract of four hundred acres for Marlin, deeded by B. G. Shields to J. E. Franks out of the lower fifteen hundred acres deeded to said B. G. Shields by T. J. Chambers, on the 13th day of September, 1857; thence by a line south, 45 west, to the River Brazos; thence up the meanderings of the river two thousand eight hundred and twenty varas, to a corner; thence north 45 east, to the south E. corner of the tract sold to J. E. Franks, as aforesaid; thence along the southern boundary of said tract to the place of beginning, the length of line being near 1,435 varas.

The boundaries of the seven-hundred-acre tract are as follows:

Beginning at a stake designated as the southwest corner of the tract of 640 acres, surveyed for the town of Marlin; thence, by a line south

45 W., to north line of said upper fifteen-hundred tract, the distance being near seventeen hundred and two and one-half varas; thence
22½ north 45 E., to the northeast corner of said upper fifteen hundred acres; thence south 45 east, to the place of beginning; thence to said tract, comprising eighteen hundred acres:

To have and to hold *to* all and singular the premises aforesaid unto the said L. G. Scoggin & J. S. Hanna, their heirs and assigns forever; and I do hereby bind myself, my heirs, executors, and administrators, to warrant and defend the right and title of said premises unto the said L. G. Scoggin and J. S. Hanna, their heirs, &c., against all persons lawfully claiming or to claim the same, or any part thereof; and do further bind myself *and I further bind myself* to surrender unto the Scoggin & Hanna the possession of said premises on or before the 1st day of January next.

In testimony whereof I have hereunto set my hand this the 22d day of May, 1863.

H. M. HOOD, SEN. [L. S.]

Witnesses:
V. E. MCLINDEN.
J. D. ALTORF.

THE STATE OF TEXAS, *County of Falls:*

Before me, J. L. Conoly, clerk of the county court of said county, personally appeared J. D. Altorf, to me well known, who, being duly sworn by me, on oath states that he saw H. M. Hood sign, execute, and deliver the foregoing deed to L. G. Scoggin and J. S. Hanna, acknowledging that he did so for the purposes and considerations therein contained, set forth, and expressed.

Given under my hand and official seal this the 23d day of M'y, A. D. 1863.

J. L. CONOLY, *C'k C. C. F. C.*

23 I, J. L. Conoly, certify that the foregoing deed was filed in my office for record, M'y 23d, A. D. 1863, at 4 o'clock p. m., and was duly recorded this the 20 day of June, A. D. 1863.

J. L. CONOLY, *C'k C. C. F. C.*

THE STATE OF TEXAS, *County of Falls:*

I, A. M. Attaway, clerk of the county court of Falls County, do hereby certify that the foregoing is a true, correct, and reliable copy of deed made by H. M. Hood, s'r, to L. G. Scoggin & J. S. Hanna, as shown on the records of this county, in book E, page' 264 & '5.

In witness whereof I hereunto set my hand and affix the seal of the county court of Falls County, at Marlin, on this the 2d day of January, 1868.

[SEAL.] A. M. ATTAWAY, *C. C. C. F. C.*

(Endorsed:) Copy of deed by H. M. Hood to L. G. Scoggin and J. S. Hanna. Exhibit No. "2."

23½ *Subpœna to L. G. Scogin, J. S. Hanna, & marshal's return of service issued March 23d,* 1868.

And afterwards, to wit, on the 23d day of March, A. D. 1868, there issued from the clerk's office subpœnas to the defendants, in words to wit:

Subpœna to L. G. Scogin.

In circuit court of the United States for the western district of Texas.
Austin sessions.

UNITED STATES OF AMERICA,
Western District of Texas:

The President of the United States to the marshal of the western district of Texas, greeting:

Whereas Phineas de Cordova, a resident citizen of the county of Travis, in said district, assignee in bankruptcy of the estate of Zenas Bartlett, bankrupt, under the provisions of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, hath filed his bill of complaint against L. M. Hood and Mary Hood, resident citizens of the county of Harrison, western district of Texas, who are sued in their fiduciary capacity of executor & executrix of the last will and testament of H. M. Hood, sr., deceased, and against L. G. Scoggin and J. S. Hanna, both of whom are resident citizens of the county of Falls, in said western district of Texas.

You are directed and commanded to summon the aforesaid defendants, to wit, the said L. M. Hood & Mary Hood, and the said L. G. Scoggin and J. S. Hanna, to be and personally appear before the circuit court of the United States for the western district of Texas, holding sessions at Austin, at May rules, to wit, the first Monday in May, A. D. 1868, or wheresoever our said court shall then be, to answer to the said bill of complaint exhibited against you, you being together impleaded,
24 and to do further, and receive what the said court shall have considered in that behalf, and this you shall not omit on pain of the penalty that will fall thereon.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court at Austin, this 23 day of March, A. D. 1868.

[L. S.] MATTHEW HOPKINS, *Clerk.*

The defendants are required to enter their appearance in this suit, in the clerk's office at Austin, on or before the first Monday in May next; otherwise the bill may be taken as confessed.

MATTHEW HOPKINS, *Clerk.*

(Endorsed:) Issued March 24, 1868. Matthew Hopkins, clerk.

The marshal's return is endorsed thereon in words, to wit:

Rec'd in office Mar. 24, '68, & executed 16th day of April, A. D. 1868, by handing within-named L. G. Sco'gin a true copy of this writ, attested by the clerk, under seal of court.

A. P. BLOCKER, *U. S. M.*
By C. CARTER, JR., *Dep'ty.*

Mar. mile., 140, 8.40; dep'ty 25, 1.50; service 2.00.

In like form subpœnas issued to J. S. Hanna, and the marshal's return is endorsed thereon.

Rec'd in office Mar. 24, '68, & executed 16 day of April, A. D. 1868,

by handing within-named J. S. Hanna a true copy of this writ, attested by clerk under seal.

A. P. BLOCKER, *U. S. M.*
By C. CARTER, JR., *Dep'ty.*

Mar. mil., 140, 8.40; dep'ty do., 25, 1.50; service 2.00.

Writs of subpœna issued at the same time to L. M. & Mary Hood, executor & executrix of H. M. Hood, sr., dec'd, but they were not returned.

25 And afterwards, to wit, on the first day of June, A. D. 1868, the following entry of appearance of the defendants, Scogin and Hanna, appears on the rule book.

Appearance of Scogin & Hanna, def's.—June 1, 1868.

June 1, 1868. Rules.

P. DE CORDOVA, ASS'EE, &C., *vs.* L. M. HOOD ET ALS. } 36. Chancery.

And now comes the solicitors of the defendants Scogin and Hanna, Hancock & West, and enter their apperrance in this cause.

HANCOCK & WEST,
Def'ts' Solicitors.

Teste:

M. HOPKINS, *Clerk.*

And afterwards, to wit, on the first day of July, A. D. 1868, the original writs of subpœna issued to L. M. Hood & Mary Hood, executor & executrix of H. M. Hood, sr., dec'd, having been lost by the deputy marshal, alias subpœnas issued to said L. M. & Mary, executor & executrix, as aforesaid, which are in words, to wit:

Subpœnas to L. M. Hood & Mary Hood, executor & ex'tr'x of H. M. Hood, sr., dec'd.

Subpœna to L. M. Hood, issued July 2nd, 1868, is in words, to wit:

Circuit court of the United States for the western district of Texas, at Austin, sitting in chancery.

UNITED STATES OF AMERICA,
Western District of Texas:

The President of the United States to the marshal of the western district of Texas, and to all to whom these presents may come, greeting:

26 P. de Cordova, official assignee of the bankrupt estate of Zenas Bartlett, a citizen of Travis County, western district of Texas, having filed his bill of complaint against L. M. Hood and Mary Hood, resident citizens of the western district of Texas, to wit, of Harrison County, in said district, in their fiduciary capacity of *as* executor and executrix of the last will & testament of H. M. Hood, sr., dec'd, and against L. G. Scoggin and S. Hanna, both of whom are resident

citizen' of said western district of Texas, to wit, of Fall County, in said district, who are made defendants.

We command you as before, and every one of you, the defendants herein named, that, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our court of chancery, to the bill herein recited and exhibited against you, and that you do answer concerning such things as shall then and there be alleged against you, and observe what our said court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process for contempt, as the court shall award.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit
27 court, at Austin, this 1st day of July, A. D. 1868.

[SEAL.] MATTHEW HOPKINS, *Clerk.*

Appearances are to be entered on or before the first Monday of September next, September rules; otherwise the bill may be taken as confessed.

M. HOPKINS, *Clerk.*

Indorsement of marshal's return is as follows:

Rec'd in office, July 3d, 1868, and executed on the 6th day of August, 1868, by delivering to J. C. Hood, executor of H. M. Hood, sr., dec'd, in person, a true copy of this subpœna.

A. P. BLOCKER, *U. S. Marshal.*
By T. B. JONES, *Deputy Mar.*

Mar. mil., 275, 16.50; dep'y's mileage, 22, 1.32; service, 2.00.

Subpœna to Mary Hood, the same as before, and issued 1st day of July, 1868, and returned on the 6th day of August, 1868, which return is in words, to wit:

Rec'd in office, August 1st, 1868, and executed on the 6th day of August, 1868, by delivering to Mary Hood, executrix of H. M. Hood, sr., dec'd, in person, a true copy of this subpœna.

A. P. BLOCKER, *U. S. M.*
By T. B. JONES, *Dep. Mar.*

M. mil., 275, 16.50; dep'y's mil., 22, 1.32; service, 2.00

28 And afterwards, to wit, on the 6th day of July, A. D., 1868, the following agreement was filed, endorsed, to wit: No. 36 Ch'y. P. de Cordova, assignee, &c. vs. Hood et als. An agreement to extend the time of filing answers & as to depositions. Filed July 6, 1868. M. Hopkins, clerk.

And which is words, to wit:

Agreement extending time to 15th Aug't, '68, & to take testimony.—Filed July 6, 1868.

U. S. circuit c't. In equity. July rules, 1868.

P. DE CORDOVA, ASSIGNEE,
vs.
HOOD, & SCOGIN, & HANNA.

In the above cause it is agreed that the def'ts, Scogin & Hanna,

may have until the 15th Aug., 1868, to file their answers in the above cause, & that said answers may be either joint or several, & in the mean time, so as to speed the cause, either party may, if they see fit in this cause from this date, take depositions of witnesses, under the rules governing the taking of evidence in the State practice.

July 3d, 1868.

HANCOCK & WEST,
Solic' for Scogin & Hanna.
CHANDLER & CARLETON,
Solicitors for P. De Cordova.

And afterwards the following entry of compl't appears at rules of Sept., 1868.

Pro confesso against all the defendants.—Ent'd Sept. rules, 1868.

September rules, 1868.

P. DE CORDOVA, ASSIGNEE,
vs.
L. M. HOOD ET ALS.

And now come Chandler & Carleton, solicitors for complainant, and the defendants Scogin & Hanna, having failed to file their answer in accordance with the agreement of counsel of file July 6th, 1868; and the defendants L. M. Hood & Mary Hood, having been duly served, and having failed to enter their appearance at September rules,
29 1868, the bill of complaint is therefore taken as confessed against all the defendants.

M. HOPKINS, *Clerk.*

CHANDLER & CARLETON,
Solicitors for Compl't.

And afterwards, to wit, on January 27, 1869, the following motion was filed in words, to wit:

Motion of defendants Scogin & Hanna to set aside pro confesso of Sept. 7, 1868.

Filed Jan'y 27, 1869.

M. HOPKINS, *Clerk.*

In the United States circuit court for the western district of the State of Texas, at Austin.

P. DE CORDOVA
vs.
AND OTHERS. } No. . In chancery.

In the above-entitled and numbered case, now come the said Samuel S. Hanna and L. G. Scogin, by their solicitors Hancock & West, and move the honorable court here to set aside the judgement, pro confesso, heretofore, to wit, on the rule-day of September, 1868, being the day of said month, taken against them, these defendants, as well as the other defendants named in said bill of complainants, and as reasons or grounds of said motion, these defendants would respectively state—

1st. That from the 3rd day of July, 1868, when an agreement was signed by the solicitors of the plaintiff and these defendants, to extend the time to file their answer till the 15th of August thereafter, up and till after the said last-named time, one of the said solicitors of these defendants, to wit, said John Hancock, whose more especial and particular duty it was to prepare the pleadings and answer in this
30 case, was much occupied in public engagements, so that the business of obtaining the necessary data to make up the answer of these defendants, was not obtained till after the said default day, in September. The said defendants, as well as their primary solicitor, W. B. Forde, esq., of Marlin, Falls County, this State, who is a solicitor of this court, resides at considerable distance from this place, and from whom the necessary information was not obtained, even at the date of said judgement pro confesso, notwithstanding said solicitors had written several letters seeking such information, and these solicitors had ultimately to draft the answer of these defendants with numerous blanks in it, & transmit the same to said W. B. Forde, that he might confer with and fill up said blanks, which was done, and at as early a date, they believed, as was reasonably practicable, and the answer returned to these applicants about the day November, 1868; but the said judgement pro confesso having been taken by said pl'ff, the same could not be filed without the consent and agreement of said pl'ff and his solicitors.

2nd. And these applicants would state that they several times applied to the said solicitors for consent to file the pleas and answer of these defendants, probably not, however, till about the meeting
31 of the present term of this honorable court; to which applications no definite answer was given, though these applicants did confidently believe, till the last few days that such consent would be given from the liberality and courtesy that has very generally been observed and practised between the solicitors of this court; but these applicants have recently, within the last few days, been informed by said solicitor for said pl'ff, that the said pl'ff directs that said judgement pro confesso be not set aside by agreement, and said defendants be not allowed to plead and answer.

3rd. And for further reason in support of this, their motion, these applicants submit that the bill of complaint of said complainant, is not in itself, by the allegations and statements therein contained, of such character in the manner and form therein stated, as this honorable court may satisfactorily proceed to adjudge and determine the rights and liabilities of the respective parties in the absence of the knowledge of the true facts of the transaction referred to, which, it is believed, the answer of the said defendants will better furnish in the absence of testimony of disinterested witnesses thereto.

4th. These applicants would further represent to this honor-
32 able court that they are not at all familiar with the practice and proceedings of this court, and may have been guilty of apparent negligence, but they most respectfully ask that the rights of the parties they represent may not thereby be prejudiced, but that they may be allowed to plead to and answer the pl'ff's said bill of complaint that justice may be done in the premises, and on such terms as may seem to your honors just and proper.

5th. These applicants would further state to the honorable court, that the answer of said before-named defendants, is believed to be fully responsive to the bill of complaint of said complainant, and discloses

the merits, in behalf of the defence, of bona fideness of purchasers of the land described in complainant's bill, without notice of an outstanding and existing lien on the same, for the consideration of forty-five thousand dollars in confederate money, paid by them, & also presents the question of the waiver of the vendor's lien, if any existed; all which is respectively submitted to the consideration of this honorable court.

HANCOCK & WEST,
Solicitor for Def'ts Hanna & Scogin.

33 And afterwards, to wit, on the 26th day of February, A. D. 1869, the following opinion was filed & entry made upon the minutes of the court, to wit:

Opinion of the chancellor & entry.

Filed Feb. 26, 1871.

M. HOPKINS, *Clerk.*

In circuit court at Austin. February 26th, 1869.

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET ALS. } No. 36. In chancery.

Motion to set aside pro confesso, and for leave to answer.

In determining whether this motion should be granted, I have carefully considered the affidavit made in its support by John Hancock, esq., one of the counsel for def'ts Scogin and Hanna; also the bill, exhibits, and other papers referred to in the argument, as well as the authorities cited by counsel. While I am free to confess that I do not consider the affidavit such as would furnish, under ordinary circumstances, any sufficient legal excuse for failure to answer in time, yet, in view of the fact that chancery court', as distinct from those at common law, have never existed in this State, and that it is only recently that the attention of the bar of this court has been called to the rules and practice in equity, perhaps it may not be improper to give some weight to the 4th
34 ground alledged in the affidavit. But it is mainly upon the 3rd ground that I have concluded to grant the motion. Upon the case as made by the bill, I should feel great reluctance in rendering a final decree upon the pro confesso, for I doubt whether great injustice might thereby be done. I do not feel satisfied that a decree ought to be rendered, without an answer, according to my understanding of the case made by the bill. Upon the whole, it seems to me proper to grant the motion.

The order of the court is, that the pro confesso, heretofore entered, be set aside as to deft's Scogin and Hanna, upon condition that they pay all costs of this suit to the present time, before the rule day in April next, and file an answer to the bill on or before said rule day.

T. H. DUVAL,
U. S. Judge.

And afterwards, the following entry appears at March rules, March 1, 1869.

Setting aside pro confesso as to L. M. & Mary Hood, entered March 1, 1869, rules.

P. DE CORDOVA, AS'EE, vs. L. M. HOOD ET ALS. } No. 36. Ch'y.

Now comes the complainant, P. de Cordova, by his solicitors, Chandler & Carleton, and sets aside the judgment pro confesso entered at the Sept. rules, 1868, against the defendants, L. M. and Mary Hood.

Teste: M. HOPKINS, *Clerk.*

35 And afterwards, to wit, on the same day, March 1st, 1869, the following entry appears upon the rule-book, March 1st, A. D. 1869.

Complainants give notice of filing amended bill, March rules, 1869.

March rules.

P. DE CORDOVA, AS'EE, vs. T. M. HOOD ET ALS. } No. 36. Chancery.

Now comes P. de Cordova, ass'ee, by his solicitors, Walton and de Normandie, and file their amended bill, and pray service of the same by office copies on Mess. Hancock & West, solicitors for defendants.

M. HOPKINS, *Clerk.*

Which amended bill is endorsed, to wit:

36. P. de Cordova, assignee, vs. T. M. Hood et al. Amended bill. Filed March 1, 1869. M. Hopkins, clerk.

36 *Amended bill.*

Filed March 1, 1869.

M. HOPKINS, *Clerk.*

In circuit court United States, western district of Texas, at Austin.
In chancery.

P. DE CORDOVA, ASSIGNEE, vs. L. M. HOOD, MARY HOOD, EX'T'R AND EX'T'X, L. G. Scogin and J. S. Hanna. } 36. Chanc'y.

To the honorable judges of the circuit court of the United States for the western district of Texas:

Your orator, P. de Cordova, assignee, &c., whose character as comp't in this case is set out in the original bill of complaint, amends his said original bill of complaint, and for amendment charges and avers as follows:

To be added to the end of the first paragraph, on page nine, (9,) of his said original bill, that is to say:

That the said H. M. Hood, sr., at the time of making the purchase of

the lands mentioned and described in Exhibit No. 1, attached to
37 the original bill of complaint, & being a copy of a deed from B. G. Shields and E. A. Shields to the said H. M. Hood, sr., viz, on the 5th day of February, A. D. 1859, made, executed, and delivered his promissory note, in writing, to the said B. G. Shields, for the sum of nine thousand dollars, due and payable on the 1st day of April, A. D. 1862, with lawful interest thereon, from and after the 1st day of January, A. D. 1860. That said note, so made, executed, and delivered, was, as in evidence, of part of the unpaid portion of the purchase-money due on the purchase by the said H. M. Hood, sr., of the lands described in Exhibit No. 1, aforesaid, from the said B. G. Shields and E. A. Shields.

And your orator charges that, to secure the payment of the nine thousand dollars mentioned in said note, the vendor's lien was expressly reserved by the terms and conditions of said Exhibit No. 1, in favor of the vendors therein, and against the vendee, H. M. Hood, sr., and his heirs and assignees & against all & every person whomsoever, who might subsequently acquire said lands. & your orator further charges
38 that subsequent to the making, execution, and delivery of the said note for nine thousand dollars, secured by the vendor's lien, as aforesaid, viz, on the 1st day of April, A. D. 1860, there was due on said note the sum of five thousand and fifteen dollars; for which said sum the said H. M. Hood, sr., then & there, viz, on the 1st day of April, A. D. 1860, made, executed, and delivered to the said B. G. Shields, his certain promissory note, in writing, for the said sum of five thousand & fifteen dollars, which said note, so given, was in lieu and in place of the said note for nine thousand dollars aforesaid, *& as* & in evidence of the balance of the money then due thereon; which said last note is the identical note set out in the original bill of complaint.

And your orator further charges that, at the time of the execution of said note for five thousand and fifteen dollars, as aforesaid, and the delivery up of the note for nine thousand dollars to the said H. M. Hood, sr., by the said B. G. Shields, it was expressly understood between them, the said Hood & Shields, that the vendor's lien reserved as aforesaid by the terms of Exhibit No. 1, should remain and continue in force
39 to secure the payment of the said five thousand and fifteen dollars, as said lien had prior thereto remained and continued in force to secure the payment of said note for nine thousand dollars.

And your orator further charges, that the said vendor's lien was in no way & to no extent, expressly or by implication waived by the said B. G. Shields, by the sur'ender of the said note for nine thousand dollars, nor by the reception on his part of the said note for five thousand and fifteen dollars. On the contrary, your orator charges, that the said lien, retained in Exhibit No. 1, remained in full force by express stipulation between the contracting parties, and by necessary implication of law in pursuance of the facts of the case.

And your orator further charges that the said defendants L. G. Scogin & J. S. Hanna, had actual notice of all the facts alleged in this amended bill, at and before the time of their alleged purchase from the said H. M. Hood, sr., of the premises described in Exhibits Nos. 1 & 2 attached to the original bill of complaint; and that they, said defendants, well knew at the time they pretended to purchase, that there
40 then remained due the said B. G. Shields the sum of five thousand and fifteen dollars of purchase-money from the said H. M. Hood, sr., which was evidenced by the note set out in the original bill of complaint, and to secure which the vendor's lien, mentioned in Ex-

hibit No. 1, rested on *an* and bound the said land the said defendants were then pretending to buy.

And your orator further charges that the said defendants had constructive notice of all and every fact hereinbefore set out and alleged to exist, in that the said Exhibit No. 1, attached to the original petition, was in Falls Coounty, Texas, where the premises conveyed were situate, duly recorded in the county records of said county, giving notice full and complete, that there was due on said purchase, by Hood from Shields, unpaid purchase-money, and for which unpaid purchase-money the vendor's lien had and did rest on said land, & for which each and every subsequent purchaser thereof would be bound and liable to the extent of the value of the land upon which said lien so rested; and your orator alle*d*ges that the said def'ts L. G. Scogin & J. S.
41 Hanna purchased said premises with full notice of all the facts herein alleged; and your orator further alle*d*ges, that Exhibit No. 1, attached to the original bill of complaint was, and is, a link in the chain of title under which the said defendants L. G. Scogin & J. S. Hanna claim title to the premises mentioned and described in said Exhibit No. 1, and that in acquiring their title, or pretended title, to said premises they were bound to look to the said deed & the stipulations and conditions thereof, (viz., Exhibit No. 1,) whereby they were charged with notice that there remained on the purchase from Shields by Hood a large portion of the purchase-money unpaid, viz., as hereinbefore alleged & set forth.

CHANDLER & CARLETON,
Solicitors for Complainant.

And your orator hereby expressly waives an answer, under oath from the defendants L. G. Scogin and J. S. Hanna, to this amendment to the original bill, but requires a full answer thereto, not under oath.

CHANDLER & CARLETON,
Solicitors for Complainants.

42 And afterwards, to wit, on the 5th day of March, A. D. 1869, the defendants Scogin and Hanna, by their solicitors, Hancock & West, filed their motion to set aside the order of court as to costs, and the following entry appears on the rule-book, to wit:

Entry.—April rules.

Monday—April rules.

P. DE CORDOVA, ASS'EE,
vs.
L. M. HOOD ET ALS. } No. 36. Chan'ry.

Now come Hancock & West, solicitors for defendants Hanna & Scogin, and file their motion to set aside the order made in this cause as to costs.

HANCOCK & WEST.

Teste.

M. HOPKINS, *Clerk.*

The motion is endorsed, to wit:

No. 36. P. de Cordova, assignee, vs. L. M. Hood et als. Motion to set aside order as to costs. Filed April 5, 1869, in words to wit:

Motion to set aside order as to costs.

Filed April 5, 1869.

M. HOPKINS, *Clerk.*

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET ALS. } In chancery. No. 36. Bill in chancery.

And now, at this day come the def'ts Scogin & Hanna, in the above styled cause, by their solicitors, Hancock & West, and move the court to set aside its order heretofore entered in said cause, requiring them to pay all the costs in said suit up to date, because they say, that the defendant L. M. Hood & M. L. Hood are jointly bound for all their own costs, and that they accrued through the neglect of the said L. M. &
Mary Hood, and they further say that the remainder of the costs
43 should also be set aside, because they say that the bill was not sufficient to maintain the judgment pro confesso, and was so held by the court; and since said order, the judgment pro confesso has actually been set aside by the complainant as to said Mary & L. M. Hood by their own motion, wherefore, they say that in equity and good con'cience all orders on the subject of costs should be set aside, and they pray that all such orders be set aside.

HANCOCK & WEST,
Sol's for Scogin & Hanna.

And on the same day, to wit, April 5, 1869, the following agreement was filed, endorsed, to wit:

36. Chancery. P. de Cordova, assignee, vs. L. M. Hood et als. Agreement for time to def'ts Scogin & Hanna. Filed Monday, 5th April, 1869. M. Hopkins, clerk.

And is in words to wit:

Agreement giving time to answer to Scogin & Hanna.

Filed April 5, 1869.

M. HOPKINS, *Clerk.*

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET AL. } 36. Chancery. Bill to foreclose.

It is agreed that the def'ts, L. G. Scogin & J. S. Hanna, shall have until the rule day in May to file their answer, and if they can prepare the same before that date, they will, previous to such rule day, show the same to the said complainant or his solicitors.

April 1st, 1869.

HANCOCK & WEST,
Sol's for Def'ts Scogin & Hanna.
CHANDLER & CARLETON & WALTON,
For Compl't.

44 And afterwards, to wit, on the 15th April, 1869, the following order was made by the chancellor:

Order as to costs. April 15, 1869.

Test:

M. HOPKINS, *Clerk.*

AT CHAMBERS, *Austin, April 15th*, 1869.

The order heretofore issued in this case requiring the defendants to pay all costs previous to the filing of an answer, is hereby suspended, with leave te file the same.

T. H. DUVAL, *U. S. Judge.*

And afterwards, to wit, on the 20th day of April, A. D. 1869, the following entry appears upon the rule-book:

Entry (rule-book) of filing answer of Scogin & Hanna.

APRIL 20, 1869.

P. DE CORDOVA, ASS'EE, *v.* L. M. HOOD ET AL. } No. 36. Chanc'y.

And now come Hancock & West, solicitors for Scogin & Hanna, and, in accordance with agreement on file, and of the order of court, this day file their joint and several sworn answer.

MATTHEW HOPKINS, *Clerk.*

And on the same day to wit, April 20, 1869, the defendants Scogin & Hanna, by their solicitors, Hancock & West, filed their sworn answer, which is endorsed, to wit:

Chanc'y. No. 36. P. de Cordova, ass'ee, vs. L. M. Hood et als. Sworn answer of def'ts Scogin & Hanna. Filed April 20th, 1869. M. Hopkins, clerk.

Which answer is in words, to wit:

45 *Answer of Scoggin & Hanna.—Filed Ap'l 20*, 1869.

In chancery. No. 36. U. S. court at Austin, Tex., western district of Tex.

P. DE CORDOVA, ASSIGNEE OF Z. BARTLETT, complainant, *vs.* L. M. HOOD, MARY HOOD, L. G. SCOGIN, & J. S. Hanna, def'ts. } Bill to enforce vendor's lien.

The joint & several answers of L. G. Scogin & J. S. Hanna, two of the defendants to the original & amended bill of complaint of P. de Cordova, assignee of Z. Bartlett, complainant.

1. These two defendants above last named now & at all times reserving to themselves all benefit & advantage which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill & amended bill of complaint contained, for answer thereto, or unto so much & such part or parts thereof, as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

46 2nd. They admit that, on or about the 1st of April, 1860, *that* a person named H. M. Hood, sr., in his lifetime a resident of Falls County, Texas, did, for value received, execute and deliver to one B. G. Shields, his certain promissory note, due on 1st April, 1862, for the sum of five thousand *doll* and fifteen dollars, payable at the Union Bank in New Orleans, in the State of Louisiana.

the lands mentioned and described in Exhibit No. 1, attached to
37 the original bill of complaint, & being a copy of a deed from B. G. Shields and E. A. Shields to the said H. M. Hood, sr., viz, on the 5th day of February, A. D. 1859, made, executed, and delivered his promissory note, in writing, to the said B. G. Shields, for the sum of nine thousand dollars, due and payable on the 1st day of April, A. D. 1862, with lawful interest thereon, from and after the 1st day of January, A. D. 1860. That said note, so made, executed, and delivered, was, as in evidence, of part of the unpaid portion of the purchase-money due on the purchase by the said H. M. Hood, sr., of the lands described in Exhibit No. 1, aforesaid, from the said B. G. Shields and E. A. Shields.

And your orator charges that, to secure the payment of the nine thousand dollars mentioned in said note, the vendor's lien was expressly reserved by the terms and conditions of said Exhibit No. 1, in favor of the vendors therein, and against the vendee, H. M. Hood, sr., and his heirs and assignees & against all & every person whomsoever, who might subsequently acquire said lands. & your orator further charges
38 that subsequent to the making, execution, and delivery of the said note for nine thousand dollars, secured by the vendor's lien, as aforesaid, viz, on the 1st day of April, A. D. 1860, there was due on said note the sum of five thousand and fifteen dollars; for which said sum the said H. M. Hood, sr., then & there, viz, on the 1st day of April, A. D. 1860, made, executed, and delivered to the said B. G. Shields, his certain promissory note, in writing, for the said sum of five thousand & fifteen dollars, which said note, so given, was in lieu and in place of the said note for nine thousand dollars aforesaid, *& as* & in evidence of the balance of the money then due thereon; which said last note is the identical note set out in the original bill of complaint.

And your orator further charges that, at the time of the execution of said note for five thousand and fifteen dollars, as aforesaid, and the delivery up of the note for nine thousand dollars to the said H. M. Hood, sr., by the said B. G. Shields, it was expressly understood between them, the said Hood & Shields, that the vendor's lien reserved as aforesaid by the terms of Exhibit No. 1, should remain and continue in force
39 to secure the payment of the said five thousand and fifteen dollars, as said lien had prior thereto remained and continued in force to secure the payment of said note for nine thousand dollars.

And your orator further charges, that the said vendor's lien was in no way & to no extent, expressly or by implication waived by the said B. G. Shields, by the surrender of the said note for nine thousand dollars, nor by the reception on his part of the said note for five thousand and fifteen dollars. On the contrary, your orator charges, that the said lien, retained in Exhibit No. 1, remained in full force by express stipulation between the contracting parties, and by necessary implication of law in pursuance of the facts of the case.

And your orator further charges that the said defendants L. G. Scogin & J. S. Hanna, had actual notice of all the facts alleged in this amended bill, at and before the time of their alleged purchase from the said H. M. Hood, sr., of the premises described in Exhibits Nos. 1 & 2 attached to the original bill of complaint; and that they, said defendants, well knew at the time they pretended to purchase, that there
40 then remained due the said B. G. Shields the sum of five thousand and fifteen dollars of purchase-money from the said H. M. Hood, sr., which was evidenced by the note set out in the original bill of complaint, and to secure which the vendor's lien, mentioned in Ex-

hibit No. 1, rested on *an* and bound the said land the said defendants were then pretending to buy.

And your orator further charges that the said defendants had constructive notice of all and every fact hereinbefore set out and alleged to exist, in that the said Exhibit No. 1, attached to the original petition, was in Falls Coounty, Texas, where the premises conveyed were situate, duly recorded in the county records of said county, giving notice full and complete, that there was due on said purchase, by Hood from Shields, unpaid purchase-money, and for which unpaid purchase-money the vendor's lien had and did rest on said land, & for which each and every subsequent purchaser thereof would be bound and liable to the extent of the value of the land upon which said lien so rested; and your orator alledges that the said def'ts L. G. Scogin & J. S.
41 Hanna purchased said premises with full notice of all the facts herein alleged; and your orator further alledges, that Exhibit No. 1, attached to the original bill of complaint was, and is, a link in the chain of title under which the said defendants L. G. Scogin & J. S. Hanna claim title to the premises mentioned and described in said Exhibit No. 1, and that in acquiring their title, or pretended title, to said premises they were bound to look to the said deed & the stipulations and conditions thereof, (viz., Exhibit No. 1,) whereby they were charged with notice that there remained on the purchase from Shields by Hood a large portion of the purchase-money unpaid, viz., as hereinbefore alleged & set forth.

CHANDLER & CARLETON,
Solicitors for Complainant.

And your orator hereby expressly waives an answer, under oath from the defendants L. G. Scogin and J. S. Hanna, to this amendment to the original bill, but requires a full answer thereto, not under oath.

CHANDLER & CARLETON,
Solicitors for Complainants.

42 And afterwards, to wit, on the 5th day of March, A. D. 1869, the defendants Scogin and Hanna, by their solicitors, Hancock & West, filed their motion to set aside the order of court as to costs, and the following entry appears on the rule-book, to wit:

Entry.—April rules.

Monday—April rules.

P. DE CORDOVA, ASS'EE, vs. L. M. HOOD ET ALS. } No. 36. Chan'ry.

Now come Hancock & West, solicitors for defendants Hanna & Scogin, and file their motion to set aside the order made in this cause as to costs.

HANCOCK & WEST.

Teste.

M. HOPKINS, *Clerk.*

The motion is endorsed, to wit:

No. 36. P. de Cordova, assignee, vs. L. M. Hood et als. Motion to set aside order as to costs. Filed April 5, 1869, in words to wit:

Motion to set aside order as to costs.

Filed April 5, 1869.

M. HOPKINS, *Clerk.*

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET ALS. } In chancery. No. 36. Bill in chancery.

And now, at this day come the def'ts Scogin & Hanna, in the above styled cause, by their solicitors, Hancock & West, and move the court to set aside its order heretofore entered in said cause, requiring them to pay all the costs in said suit up to date, because they say, that the defendant L. M. Hood & M. L. Hood are jointly bound for all their own costs, and that they accrued through the neglect of the said L. M. & Mary Hood, and they further say that the remainder of the costs
43 should also be set aside, because they say that the bill was not sufficient to maintain the judgment pro confesso, and was so held by the court; and since said order, the judgment pro confesso has actually been set aside by the complainant as to said Mary & L. M. Hood by their own motion, wherefore, they say that in equity and good con'cience all orders on the subject of costs should be set aside, and they pray that all such orders be set aside.

HANCOCK & WEST,
Sol's for Scogin & Hanna.

And on the same day, to wit, April 5, 1869, the following agreement was filed, endorsed, to wit:

36. Chancery. P. de Cordova, assignee, vs. L. M. Hood et als. Agreement for time to def'ts Scogin & Hanna. Filed Monday, 5th April, 1869. M. Hopkins, clerk.

And is in words to wit:

Agreement giving time to answer to Scogin & Hanna.

Filed April 5, 1869.

M. HOPKINS, *Clerk.*

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET AL. } 36. Chancery. Bill to foreclose.

It is agreed that the def'ts, L. G. Scogin & J. S. Hanna, shall have until the rule day in May to file their answer, and if they can prepare the same before that date, they will, previous to such rule day, show the same to the said complainant or his solicitors.

April 1st, 1869.

HANCOCK & WEST,
Sol's for Def'ts Scogin & Hanna.
CHANDLER & CARLETON & WALTON,
For Compl't.

44 And afterwards, to wit, on the 15th April, 1869, the following order was made by the chancellor:

Order as to costs. April 15, 1869.

Test:

M. HOPKINS, *Clerk.*

AT CHAMBERS, *Austin, April 15th*, 1869.

The order heretofore issued in this case requiring the defendants to pay all costs previous to the filing of an answer, is hereby suspended, with leave te file the same.

T. H. DUVAL, *U. S. Judge.*

And afterwards, to wit, on the 20th day of April, A. D. 1869, the following entry appears upon the rule-book:

Entry (rule-book) of filing answer of Scogin & Hanna.

APRIL 20, 1869.

P. DE CORDOVA, ASS'EE, *v.* L. M. HOOD ET AL. } No. 36. Chanc'y.

And now come Hancock & West, solicitors for Scogin & Hanna, and, in accordance with agreement on file, and of the order of court, this day file their joint and several sworn answer.

MATTHEW HOPKINS, *Clerk.*

And on the same day to wit, April 20, 1869, the defendants Scogin & Hanna, by their solicitors, Hancock & West, filed their sworn answer, which is endorsed, to wit:

Chanc'y. No. 36. P. de Cordova, ass'ee, vs. L. M. Hood et als. Sworn answer of def'ts Scogin & Hanna. Filed April 20th, 1869. M. Hopkins, clerk.

Which answer is in words, to wit:

45 *Answer of Scoggin & Hanna.—Filed Ap'l* 20, 1869.

In chancery. No. 36. U. S. court at Austin, Tex., western district of Tex.

P. DE CORDOVA, ASSIGNEE OF Z. BARTLETT, complainant, *vs.* L. M. HOOD, MARY HOOD, L. G. SCOGIN, & J. S. Hanna, def'ts. } Bill to enforce vendor's lien.

The joint & several answers of L. G. Scogin & J. S. Hanna, two of the defendants to the original & amended bill of complaint of P. de Cordova, assignee of Z. Bartlett, complainant.

1. These two defendants above last named now & at all times reserving to themselves all benefit & advantage which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill & amended bill of complaint contained, for answer thereto, or unto so much & such part or parts thereof, as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

46 2nd. They admit that, on or about the 1st of April, 1860, *that* a person named H. M. Hood, sr., in his lifetime a resident of Falls County, Texas, did, for value received, execute and deliver to one B. G. Shields, his certain promissory note, due on 1st April, 1862, for the sum of five thousand *doll* and fifteen dollars, payable at the Union Bank in New Orleans, in the State of Louisiana.

These defendants further admit that, at a date subsequent to the execution & delivery of said promissory note referred to by the said H. M. Hood, sr., to the said B. G. Shields, that the said B. G. Shields, for a valuable consideration, transferred the same to one Z. Bartlett, but these defendants expressly deny that the transfer of said note by the said B. G. Shields to the said Z. Bartlett was in manner & form as the said complaint in his bill of complaint has averred, but these defendants allege the facts of such transfer to be thus & not otherwise.

3. That, on the 28th day of September, 1862, some five months after the maturity of the said note above set forth as due on 1st April, 1862, the said B. G. Shields, in payment of a precedent debt due by the said Shields to the said Bartlett, for the sum of about twelve hundred dollars, & also for the further consideration of a certain lot of cotton sold by the said Bartlett at that time, to the said Shields, for the sum of twelve cents per pound, delivered & endorsed by simply writing his name, that is to say, the name of the said B. G. Shields on the back of said
47 note, and with no other words whatever, did as aforesaid, & in this manner & in no other, endorse & deliver said note to the said Bartlett on the said 28th of September, A. D. 1862.

And these defendants expressly deny that there was any writing of any kind placed on the back of said note at the time of its endorsement & delivery by the said B. G. Shields to the said Bartlett, by the said Shields, or by any one else, & they especially deny that there was written on the same above the signature of the said Shields any such writing as that set forth in complainant's bill, or any writing whatever purpo'ting in any manner to assign, set over, & deliver the said note with all the equitable and vendor's lien, on the land described in the exhibits annexed to complainant's bill or any other land; & that the said endorsement by the said B. G. Shields so made at the time of the transfer and delivery of said note to the said Bartlett, was a blank endorsement and nothing more. And defendants further say that if any such endorsement & transfer of lien is now placed & to be found on the back of said note as alleged & set forth in complainant's bill, then they say that the same was not placed there by the said Shields, or by any other person with his consent, nor as they are advised & believe, & therefore state the fact to be so; that said agreement on the back of said note set forth in said complainant's bill, & purporting to be a transfer by the said B. G. Shields to the said Bartlett of the vendor's lien on the land set forth in Exhibit No. 1, attached to complainant's bill, was not placed
48 on said note by the said Bartlett while the same was his property, nor was it ever placed on said note by the consent or agreement of the said Bartlett, but the fact is that the said Bartlett delivered said note to the said complainant, as these defendants are informed & believe. 4 & so charge the fact to be, with only a blank endorsement therein, & no other, & that if said purported endorsement as to said lien above referred to is now on the back of said note, (& to this fact these defendant are entire strangers other than as they find the same so stated in complain't's bill,) then they say that the said endorsement & purported transfer of the vendor's lien was written on said note by the said complainant or some other person after said note had passed beyond the control of the said Shields & the said Bartlett, & without the knowledge or consent of either of the persons last named.

4. Defendants, further answering, say that they are informed and believe, & therefore state the fact to be, that on the said 28th September, 1862, when the said Shields endorsed the said note to the said Z. Bartlett by writing his name in blank on the back thereof as heretofore

alleged, that the said Shields became presently liable on said note jointly with the said H. M. Hood, sr., to the said Bartlett, for the payment of the full amount of the same, & that at that date the said note was past maturity, & both the said H. M. Hood, sr. and the said B. G. Shields were liable to pay the same, & that at said date both the
49 said H. M. Hood, sr., & the said B. G. Shields owned a large amount of property subject to forced sale, to fully pay the said note & all interest thereon, out of their personal & other property, as these defendants are informed & believe, & so charge the fact to be. They further say that the said Bartlett wholly failed & neglected to take the necessary steps required by law to fix the liability of the said Shields on the said note, either as against the said Shields or the said H. M. Hood, sr. By reason of which all these defendants say that they are advised that, by the taking of the said note with the personal security of the said Shields after the maturity of the same, & by the failure on the part of said Bartlett to pursue his remedies against the said Shields and the said H. M. Hood, sr., that all implied vendor's lien, if any ever existed, was waived, abandoned, & lost by the laches, the want of diligence, & wilful neglect of the said Bartlett & the said complainant also, so that at the date of the filing of said bill of complaint, and for a long time anterior thereto, & since then down to the present time, as these defendants are advised & believe, & so state the fact to be, that no vendor's lien has existed on the land set forth in Exhibit No. 1 to complainant's bill, in favor of complainant or any other person.

5. These defendants, further answering to said complainant's bill, say that they know nothing with certainty as to the time, place, or
50 manner of the death of the said H. M. Hood, s'r, but they are informed & believe that the said H. M. Hood, s'r, departed this life at a period subsequent to the 1st day of September, 1863, &, as they believe, some time in the year 1865, but of the precise date of his death they are not informed. The defendants further say that they are entire strangers to the facts, except as they find the same alleged in the said complainant's bill, as to whether the said H. M. Hood, s'r, made a will, or as to the provisions of said will, as to whether any & what control the probate court should have over his estate, or as to who should be the executors of the said will; & of all these facts they ask that strict proof be required, & the will may be produced. These defendants, however, have heard that the said L. M. Hood & the said Mary Hood have been acting as the executors of the said H. M. Hood, s'r; but whether the said will has been duly probated in Washington County, Texas, or elsewhere, & whether letters testamentary have been duly & legally issued to the said L. M. Hood & Mary Hood alone, and to no one else, & whether said letters, if so issued, are legal & still unrevoked, these defendants know nothing with sufficient certainty, but have been informed that one T. C. Hood is an executor also of said Hood; & all the facts concerning the same as alleged in said complainants' bill may be true, as these defendants know nothing to the contrary, except from hearsay, they be-
51 ing utter strangers to the actual facts concerning the same, and unable to form any belief concer'ing the same, & therefore ask that the complainants may be held to strict proof of the same.

6. These defendants, further answering, admit that the said Z. Bartlett was adjudged a bankrupt at the date & in the manner alleged in complainant's bill, & these defendants admit that the said complainant, de Cordova, is acting as assignee of the said bankrupt, Z. Bartlett, but these defendants are not fully advised or informed as to the date or legality of the appointment of the said complainant as assignee of the said

bankrupt, Z. Bartlett; & though they know nothing to the contrary, being strangers to the facts, yet they are not prepared to admit the same, & require strict proof thereof. The defendants further say that they are not fully advised or informed as to the legal liability of the said L. M. Hood & Mary Hood, or the estate of the said H. M. Hood, s'r, to the said complainant on the note set forth in his said bill, nor are they sufficiently advised as to the present ownership of said note, or of the ownership of the same at the time the suit was brought, & being wholly unable to admit or deny said allegations by reason of their being strangers to the matters there alleged & set forth, they ask that, so far as said averments may materially affect the legal or equitable rights of
52 these defendants, that the said complainant be held, to that extent, to strict proof of his averments in this behalf.

7. These defendants, L. G. Scogin & J. S. Hanna, further answering, say that they deny expressly that, on or about the 5th day of February, A. D. 1859, as charged in said bill of complaint, or at any other time, that the said B. G. Shields & E. A. Shields sold to the said H. M. Hood, s'r, the land set out in complainant's bill, and referred to in Exhibit No. 1 to said bill, but these defendants aver the facts concerning said sale to be in thus wise, & no otherwise: That, on the 5th day of February, A. D. 1859, the said B. G. Shields alone sold the said land set forth in complainant's bill & exhibits to the said H. M. Hood, s'r, for the sums of money in said bill set forth as the full amount of said consideration, to wit, the sum of twenty-seven thousand dollars; and that, in addition to the signature of the said B. G. Shields, there also appears appended to said deed the name of one E. A. Shields, the wife of said B. G. Shields, but defendants say that they are advised that there are no such apt & proper words in such conveyance set out as Exhibit No. 1 to complainant's bill as to convey the interest of the said E. A. Shields in said property, or such as would enable the said B. G. Shields to convey said property, to the extent at least of the homestead exemption of two hundred acres. The said land, so conveyed, was, at the date of said deed, the homestead of the said E. A. Shields & B. G. Shields, in the country
53 and beyond the limits of any corporation at the date of said deed referred to in complainant's bill, & to that extent they are advised that the said deed is not fully operative.

8. These defendants furthar say that they deny that all the amounts set up in complainant's bill as to be paid by the said H. M. Hood, s'r, were to paid in manner & form as the said complainant has in his said bill & amended bill of complaint alleged; but they say the facts, so far as they are advised & informed, are thus & not otherwise; That, for the sum of nine thousand , payable on 1st of April, 1861, with interest from January 1st, 1860, at the rate of eight per cent. per annum, & for the furthar sum of nine thousand dollars, payable on 1st day of April, 1862, with interest thereon from 1st day of January, A. D. 1860, at the rate of eight per cent. per annum, the said H. M. Hood, s'r, did not execute his own note alone, payable to the order of the said B. G. Shields, as is averred in said bill of complaint, but that for the said sums last named, to wit, nine thousand dollars, due April 1st, 1861, & nine thousand dollars due April 1st, 1862, with legal interest thereon from 1st of January, 1860, the said H. M. Hood, s'r, & a person named H. M. Hood, j'r, made, executed, & delivered their joint & several notes for said last-named amounts, payable to the said B. G. Shields, & not the single note of the said H. M. Hood, senior, as complainant has in
54 his bill & amended bill of complaint alleged & set forth; & these defendants furthar aver that the reason & purpose of the said

B. G. Shields in taking the said joint & several notes of the said H. M. Hood, s'r, & H. M. Hood, j'r, as they are informed and believe, & so state, was to have, as security for the payment of said money, the name of said H. M. Hood, j'r; & these defendants are advised & believe & so state that the effect in law & in equity of the taking by the said B. G. Shields of the joint & several notes of the said H. M. Hood, s'r, & the said H. M. Hood, j'r, was, that they both became jointly & severally & equally bound in law to pay to the said B. G. Shields the amounts of said notes above set forth as fully as *as* the said H. M. Hood, s'r; & that said H. M. Hood, j'r, was bound, in addition to the said H. M. Hood, senior, to the said B. G. Shields; & defendant' further say that are informed & believe, & therefore state the fact to be so, that the said H. M. Hood, j'r, at the time that he signed said notes, & at the maturity thereof, was in possession of a sufficient amount of property to fully pay off & discharge said notes had suit been instituted against him, or legal steps taken to secure & fix his ultimate liability; & defendants say that no steps whatever were taken to collect said sums of money so due by the said H. M. Hood, j'r, but, as will more fully & at large appear hereafter, the said H. M. Hood, j'r, was released from all liability by the said B. G. Shields.

55 9. These defendants, further answering, fully, explicitly, & expressly, deny that the said note for five thousand & fifteen dollars, dated April 1st, 1860, & due April 1st, 1862, & signed by H. M. Hood, senior, & payable to the order of B. G. Shields, being the same note set out in full in complainant's bill, was made, executed, & delivered to the said B. G. Shields by the said H. M. Hood, s'r, for & in the place, & as a part of the note described in the said Exhibit No. 1, as the note due on the 1st day of April, 1862, for nine thousand dollars as a part the purchase-money for the land described in Exhibit No. 1, as is alleged in the said bill & amended bill of complaint. These defendants aver the fact to be that there was no such note ever given to the said B. G. Shields for the purchase-money of said tracts of land as the individual note of H. M. Hood, s'r, for nine thousand dollars, due April 1st, 1862, with legal interest from 1st of January, 1860, but the fact was, as heretofore stated, that the joint & several note' of H. M. Hood, s'r, & H. M. Hood, j'r, was given to the said B. G. Shields, for that amount due 1st of April, 1862, & with legal interest from January 1st, 1860, & they further say that, on the 1st day of April, 1860, being more than thirteen months after the date of the deed, from the said B. G. Shields to the said H. M. Hood, s'r, which said deed was dated 5th Feb'y, 1859, & was, as appears from the Exhibit No. 1 of complaint, absolute on its face, the said B. G. Shields being greatly in need of ready money & ex-

56 ceedingly anxious to raise funds for his immediate use on the said joint & several note' of the said H. M. Hood, s'r, & H. M. Hood, j'r, for the said sum of nine thousand dollars due April 1st, 1862, payable to him, the said B. G. Shields, & the said note being the last of the notes to mature for the purchase-money of the land so sold by the said B. G. Shields to the said H. M. Hood, s'r, the said Shields, about the 1st of January, 1860, or near that date, offered to discount the said note so to fall due on 1st of April, 1862, being the joint & several note of the said H. M. Hood, s'r, & H. M. Hood, j'r, heretofore referred to & described herein; & the said H. M. Hood, s'r, to whom the said Shields so made the offer, having already paid a large amount, & in fact nearly the entire amount of the purchase-money then due, & this being the last note to be paid on said land was anxious, as well on his own account as on the account of H. M. Hood, j'r, his co-obligor, to take up & pay, on

advantageous terms, the said note which still had two years to run before maturity. These defendants further state that they are informed & believe, & therefore state the fact to be true, that the said H. M. Hood, s'r, some time about the month of January, 1860, or about that date, paid on the said joint & several note the sum of three thousand dollars, or nearly if not quite the sum of four thousand dollars, in cash to the said B. G. Shields; & that, in consideration of this large cash payment so made by the said H. M. Hood, s'r, two years before
57 the maturity of the said joint and several note, & in the further consideration of a draft payable at sight, or upon some short time in New Orleans, for the sum of five thousand dollars drawn by the said H. M. Hood, s'r, in favor of the said B. G. Shields, & delivered to him, the said B. G. Shields at that date surrendered, released, & give up to the said H. M. Hood, s'r, the said joint & several note of the said H. M. Hood, s'r, & H. M. Hood, j'r, dated Feb'y 26th, 1859, for the sum of nine thousand dollars, due April 1st, 1862, with interest at eight per cent. per annum from 1st of January, 1860, being the same note heretofore referred to, & the same was by the said H. M. Hood, s'r, cancelled & destroyed, & at the date of the surrender of the same, which occurred in the county of Falls, near where the said B. G. Shields & Z. Bartlett lived. The said H. M. Hood, s'r, stated publicly, at the time, in said county of Falls, & in the hearing of the said Shields, & also of the said Bartlett, as these defendants believe, & of other persons, openly & publicly, that he had fully paid & discharged the last incumbrance on the said land, purchased by him of the said Shields, being the same land set up & referred to in complainant's bill, & that these statements were made publicly by the said H. M. Hood, s'r, & made with the knowledge of the said Shields & the said Bartlett, & the truth of the same was acquiesced in by them, by their silence at least, if not openly, as these defendants are informed & believe.

58 These defendants, further answering, say that the said draft for five thousand dollars so delivered as aforesaid by the said H. M. Hood, s'r, to the said B. G. Shields was transmitted by the said B. G. Shields to the city of New Orleans, Louisiana, where the same was made payable, for collection, & the same was duly presented for payment, & the payment of the same refused by the drawees thereof, as these defendants are informed & believed, & so charge the fact to be, & that the same, after being duly protested in the city of New Orleans, by a notary public for non-payment, was returned to the said B. G. Shields, & thereupon, upon the request & demand of the said Shields, the said H. M. Hood, s'r, executed, on 1st of April, 1860, in Falls County, Texas, the note set out in complainant's bill for the sum of five thousand & fifteen dollars, (the said fifteen dollars being, as these defendants believe, the expenses & charges attending the presentation & notarial protest of said draft for five thousand dollars,) due, without interest & without the signature of H. M. Hood, j'r, on 1st of April, 1862, & delivered the same to the said B. G. Shields, who received the same as the final & last payment on the joint & several note of H. M. Hood, s'r, & H. M. Hood, jr., in lieu of the original protested draft, for five thousand dollars above referred to. By reason of all which these defendants expressly deny that the said note for five thousand &
59 fifteen dollars, due 1st of April, 1862, was given as the purchase-money for the land described in complainant's bill & exhibits, & they deny that any vendor's lien ever existed on said land, for the payment of said, & they are advised by their solicitors & believe that if any vendor's lien ever existed in favor of the said Shields for the pay-

ment of the said joint & several note, due April 1st, 1862, that said lien was utterly lost, waived, & destroyed by the release of H. M. Hood, j'r, from all liability, by the release & surrender of said joint & several note, & the receipt of the New Orleans draft for five thousand dollars, by Shields of H. M. Hood, s'r, & the subsequent payment by H. M. Hood, s'r, of said draft by his own individual note for $5,015, due April 1st, 1862; by which acts the said lieu, if it ever existed, was forever waived, lost, & destroyed, & no such lien was or could be transferred by the said Bartlett, the said Shields, or any other person to the said complainant or any other person.

And these defendants, further answering, say that the said note above referred to for the sum of five thousand and fifteen dollars, was, as has heretofore been in this answer set forth, endorsed in blank by the said B. G. Shields to the said Z. Bartlett, on the 28th day of September, 1862, & that, in treating for & receiving said note, the said Bartlett took the same without any reference to any consideration for the same other
60 than the personal responsibility of the maker, the said H. M. Hood, s'r, & the solvency of the said B. G. Shields, the endorser. They further say that the said Z. Bartlett, who is a resident of the town of Marlin, where or near which the said defendant L. G. Scogin resides, was the holder of the said note last-named at the time of the purchase of said land by these defendants of the said H. M. Hood, s'r, & that the said Z. Bartlett was well aware of the purchase & payment of the purchase by these defendants to the said H. M. Hood, s'r, at & before said sale was made, & the said Bartlett never asserted any right to said land or any lien on the same by virtue of this note or in any other manner.

10. These defendants, further answering, say that it is true that, on or about the 22nd day of May, 1863, these said defendants did purchase the land described in Exhibit No. 1 of the complainant's bill, & received an absolute deed therefor from the said H. M. Hood, sr.; but these defendants unqualifiedly, expressly, & fully deny that, at or before the said purchase & payment of the purchase-money, they had any notice whatever, actual, constructive, or otherwise, of the existence of any lien whatever on said land by reason of said note, or in any other way; & they expressly deny that they ever heard or knew at the time of their purchase, or for years after the same was complete, that this note sued on, being the said note for $5,015.00, existed, or that any lien of
61 any kind was claimed or pretended to exist on said land in favor of said Shields, the said Bartlett, or any one else. & these defendants aver expressly the facts to be that, before, at, & long subsequent to the purchase of said land on 22nd day of May, 1863, by these defendants, of the said H. M. Hood, sr., that they were wholly ignorant of the existence of any claim, real or pretended, owned by any one on said land, & that, in such ignorance, they received an absolute conveyance for said land from the said H. M. Hood, sr., & paid him the purchase-money for the same, & entered into possession of said land in good faith, & have put, in addition to the improvements on the same at the time of the purchase, other valuable improvements, of the value of six thousand dollars, & are now in actual possession of the same. & these defendants further say, that at the time of said purchase, & when said money was paid down to the said H. M. Hood, sr., the said H. M. Hood, sr., assured these defendants that he had paid to the said Shields the last dollar of the notes that were originally given for the land, & that the nine-thousand-dollar note falling due 1st of April, 1862, had especially been wholly discharged. Defendants further say that there was no deed, mortgage, or other instrument of record show-

ing any incumbrance on said land; & being assured by the said H. M. Hood, sr., who was a man of good standing in the community,
62 that he had paid the last note for said land to the said B. G. Shields, these defendants, acting in the utmost good faith, & with no design or purpose to cheat or defraud the said Shields, the said Bartlett, the said complainant, or any other person, bought & paid for said land; and they further aver that, had they believed or had they reason to believe at the time of said purchase, that the land had not been paid for by the said H. M. Hood, sr., or that there was any lien, or mortgage, or incumbrance of any kind on the said land, they would not have purchased the same; but having been assured by their vendor that he had paid the last note due on his land, & that no notes remained unpaid, & being further assured by him that there was no lien or incumbrance on the land, & the apparent title being in him, these defendants honestly purchased & paid to the said H. M. Hood, sr., a valuable consideration for the same.

11. These defendants, further answering, fully & expressly deny the averment of the said complainant that they paid no valuable or valid consideration for the said land as above alleged to be purchased by them; & they say that the said averment is not true. & they further say that the facts in reference to said payment are these & none others:

That, on the 22nd day of May, 1863, the day of the said purchase
63 of said land by these defendants, being the said two tracts of land described in Exhibit No. 1 attached to complainant's bill, were worth the sum of twenty-five dollars per acre in gold, & were so valued in the county of Falls; were then estimated there to be worth the sum of forty-four or forty-five thousand dollars in gold; that the said defendants opened negotiations a short time before the date of the purchase with the said H. M. Hood, sr., & expressed a desire to purchase the said lands of him if they could be had of him at anything like a reasonable rate; they further state that, after some further negotiations the said H. M. Hood, sr., offered to receive & agreed to take of these said defendants in payment for said tracts, the sum of forty-five thousand dollars, to be paid to him in the notes of the then so-called Confederate States of America, which said notes were of that class of confederate notes that bore interest at the rate per day of two per cent., & were known & called interest-bearing notes, & which were, at that time, of considerable value, & were, in the month of May, 1863, & June, 1863, much sought after in Falls County, Texas, & in other parts of Texas, & were regarded as articles of value, & were used as investments, & for purchasing property, & at that said date & in that said locality were worth not less than eighty cents on the dollar;
64 that is to say, the said interest-bearing notes of the so-called confederacy above described, were of such value that one dollar of such interest-bearing confederate notes would, at that time & place, purchase eighty cents in American gold coin. And these defendants say that said currency was imposed upon the people of the county by the authority of the laws of the Confederate States; that it was the usual & ordinary currency of the country, & the circulation of the same was enjoined by military rules & orders; & it was the currency in which the ordinary business transactions of the country in buying & selling were almost altogether conducted; that this money was used in the said purchase of said land made by these defendants with no view to aid the Confederate States in their rebellion against the United States, nor was the same received by the said H. M. Hood, sr., with any said object, but it was merely used in the said trade as the ordinary, usual,

& almost the only representative of value then in circulation. Defendants further state that they acquired a portion of said currency by paying American gold coin for the same, & the remainder by the traffic & sale of the produce of their farms, & the returns of sales of their own personal & real property, & that the said currency had, at that
65 date, as aforesaid, a purchasing power in the community at large nearly equal to gold, & being in the proportion to gold herein above stated; & the said currency being of such value as aforesaid, was selected by the said H. M. Hood, sr., as the article in which he was to be paid, & the same was so paid by the said defendants to the said Hood in the utmost good faith, & by him voluntarily received; & defendants say that, at the time of the execution of said deed, to wit, on 22nd day of May, 1863, these said defendants paid down in the said notes the sum of thirty-five thousand dollars, & that they executed their note to the said H. M. Hood, sr., for the remaining ten thousand, payable in the interest-bearing notes of the Confederate States; & defendants further say that, in order to obtain the necessary amount of interest-bearing notes to pay the same, these defendants had to borrow that sum & give their note for that amount—ten thousand dollars—& that a part of said note for $10,000 was actually paid in gold coin to the amount of $1,600, by the defendant L. G. Scogin, which said payment was the last payment of the purchase-money on the said purchase of the said land made by these defendants of the said H. M. Hood, sr., as herein detailed; & they further aver that the whole of said
66 sum, including the last ten thousand dollars, was all paid by these defendants to the said H. M. Hood, sr., without any knowledge or notice, actual, constructive, or otherwise, direct or indirect, prior to said payment, that any sum of money as due, or any lien, real or pretended, was set up by the said Shields, the said Bartlett, the said complainant, or any other person, & in the utmost good faith that they never so much as learned of the existence of said note of five thousand & fifteen dollars until more than six months after the death of the said H. M. Hood, sr., & some time in the year 1866, & long after they had, in good faith, taken possession of said land, & paid the last dollar of the purchase-money. Wherefore these defendants respectfully submit that, under the facts, *that* they are innocent purchasers for a valuable consideration in good faith, & as such are entitled to the favorable consideration of a court of equity.

12. And these defendants, further answering, deny that the said complainant has no remedy at law. On the contrary, they say that they are advised & believe that, even if the averments were true, *that* he has his remedy at law, and is not of right entitled to maintain his bill in equity until he shall have exhausted his remedies at law.

13. And these defendants, further answering, say that they sub-
67 mit that they have now fully answered each & every part of the complainant's said bill & amended bill that they have been or now advised it is material or necessary for them to answer; & they therefore pray that they may be here dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

(Sign') L. D. SCOGIN.
(Sign') J. S. HANNA.

W. B. FORD &
HANCOCK & WEST,
Sol'rs for Def.

68 STATE OF TEXAS, *Falls County:*

Personally appeared before the undersigned W'm Kellebrew, a U. S. commissioner of affidavits & bails, & duly appointed in accordance with law by the proper authority to take depositions in civil cases, L. G. Scogin & J. S. Hanna, whose names appear signed by themselves to the foregoing answer, & being by me duly sworn, say that they are the persons named as defendants therein; that the matters & things in said answer set forth are, where stated of their knowledge, true, & where stated on the information of others, they believe the statements to be true.

(Sign') L. G. SCOGIN.
(Sign') J. S. HANNA.

In witness whereof I have hereunto officially set my hand, officially using a scroll for seal, having no seal, this 16th day of April, 1869.

W'M KILLEBREW, [SEAL.]
U. S. Commissioner for Western District of Texas.

69 And afterwards, to wit, on the 16th day of July, 1869, the following agreement was filed, endorsed, to wit:

No. 36. De Cordova vs. Hood et als. Agreement. Filed July 16, '69. M. Hopkins, clerk.

And is in words to wit:

Agreement as to amendment to bill.

Filed July 16, 1869.

M. HOPKINS, *Clerk.*

In chancery. Circuit court U. S., at Austin.

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET ALS. } No. 36.

It is agreed by the def'ts L. G. Scoggin and J. S. Hanna that the complainant may now file his application to amend his bill in this cause without prejudice, the same as if the application was made on the rule day in June. The right, however, to oppose said leave to amend at any time in the present condition of the suit, upon all grounds, is fully reserved to said defendants, except the objection that it was not made at the June rules. And they admit notice of said application, and that it is set for hearing at August rules, A. D. 1869.

HANCOCK & WEST,
Solicitors for Hanna & Scogin.
CHANDLER & CARLETON,
WALTON & DE NORMANDIE,
Solicitors for Compl't.

AUSTIN, *July* 16, 1869.

And on the same day, to wit, July 16, 1869, the following application for leave to amend bill was filed & entered in the rule. The application for leave to amend is endorsed in words, to wit:

70 *Application for leave to amend bill.*

Filed July 16, 1869.

M. HOPKINS, *Clerk.*

DE CORDOVA
vs.
HOOD ET AL. } No. 36.

(& endorsed:)

Def'ts L. G. Scoggin & J. S. Hanna, or their solicitors, will take notice that this application is set for hearing at August rules, 1869, or as soon thereafter as the same can be heard by the court.

C. & CARLETON,
W. & DE NORMANDIE,
Solicitors.

And is in words to wit:

Application for leave to amend bill.

Filed July 16, 1869.

M. HOPKINS, *Clerk.*

In circuit court U. S. west. dist. Texas.

P. DE CORDOVA, ASSIGNEE,
vs.
L. M. HOOD ET AL. } No. 36. In chancery.

And now comes the complainant and moves the court for leave to amend his original and 1st amended bill of complaint in this cause, and for cause and ground of amendment he here refers to his own affidavit, herewith filed as part of this application; and as to the substance of the proposed amendment, he here refers to a draft of the amendments proposed to be made, which is herewith filed and made a part of this application herein; avouching the truth of the affidavit and the materiality of the proposed amendments, he prays an order of the court granting him leave to amend. He here refers, also, to the accompanying agreement on the part of the counsel for def'ts L. G. Scoggin & J. S. Hanna, and begs to refer to it at all times for all necessary purposes.

P. DE CORDOVA, *Compl't.*

CHANDLER & CARLETON,
WALTON & DE NORMANDIE,
Solicitors.

71 Affidavit to the foregoing application is endorsed, to wit: No. 36. De Cordova vs. Hood et al. Affidavit. Filed July 16, 1869. M. Hopkins clerk.

And is in words, to wit:

Affidavit of P. De Cordova to application for leave to amend bill.—Filed July 16, 1869.

In circuit court U. S. west dist. Tex., at Austin. In chancery.

P. DE CORDOVA, ASSIGNEE,
vs.
L. M. HOOD ET AL.

P. de Cordova, complainant in the above stated cause and herein

affiant, being first duly sworn, states on oath that he instituted the cause named in the caption hereof, as he believed, for the best interest of the estate and creditors of Zenas Bartlett, the bankrupt and that he acts therein above as assignee; and being further sworn, he says, that, by some error, whether clerical or founded or erroneous information, he does not know, one L. M. Hood was named as a defendant to the original & 1st amended bill in the character of executor of the last will and testament of H. M. Hood, s'r, dec'd, whereon T. C. Hood should have been named as such defendant; and being further sworn, he states he believed he was sufficiently careful in gathering the facts prior to the bringing of said suit to obtain the very facts of the case, but by some means, the error named, crept into the pleadings. And being further sworn he says: That he was not informed of the fact that H. M. Hood, j'r, signed the original note for ($9,000) nine
72 thousand dollars mentioned in the original and amended bill until the coming in of the answer of the defendants L. G. Scoggin and J. S. Hanna, although he had before that time sought to possess himself of all the facts of the case as aforesaid; that upon the coming in of said answer, he, affiant, at the earliest opportunity, his official engagements as assignee of the estate of bankrupts would permit, renewed his efforts to obtain information upon that and other points made in said answer, and was enabled to find and did find the facts to exist as to said note, as they are alleged in his 2nd amendment to the original bill, which amendment he now seeks to file in court. And, being further sworn, he states he deems & believes the amendments he now proposes to make material and important; that his said amendements are prepared, signed by solicitors, and ready to be filed in court. And, being further sworn, he says that he believes that said amendments, as prepared and signed, are not only material and important, but are also necessary to be made to the proper prosecution of the suit and the proper administration of the bankrupt estate of the said Zenas Bartlett. And, being further sworn, he says that said amendments are proposed at the earliest day practicable, after obtaining intimation, or having any cause to believe that the facts
73 were anywhat different to those set up in the original & 1st amended bill; and, being further sworn, he says that the amendments now proposed to be made are not offered for the purpose or with any intention to delay the progress of the cause, but that the facts of the case may be before the court for full & final adjudication, and are here rendered because he believes it is his duty to make them. And further he said not.

P. DE CORDOVA.

Sword to & subscribed before me this 15th of July.

WESTON ROWAND,
U. S. Commissioner W. D. Texas.

74 And, thereupon, the 2d amended bill was filed as an exhibit July 16, 1869, and is in words, to wit:

2nd amended bill.

Filed July 16, 1869.

M. HOPKINS, *Clerk.*

& filed August 17th, 1869.

M. HOPKINS, *Clerk.*

In chancery. Circuit court U. S. west dist. Tex., at Austin.

UNITED STATES OF AMERICA, *State of Texas:*

P. DE CORDOVA, ASSIGNEE, *vs.* L. M. HOOD ET AL. } No. 36.

To the hon. judges of the circuit court of the United State for the western district of Texas, at Austin, exercising chancery powers:

Your orator, P. de Cordova, of the character and residence named in his original & 1st amended bill exhibits this his 2nd amended bill against the parties defendant named in his said original & 1st amended bill, & also against T. C. Hood, one of the executors of the last will and testament of H. M. Hood, s'r, dec'd, who resides in the county of Harrison, in the State of Texas, and thereupon he respectfully shows
75 unto your honors—

1. That in naming parties defendant to his original bill, he committed an error, in that he named as a defendant to said bill the said L. M. Hood, therein named as one of the executors of the last will and testament of H. M. Hood, s'r, deceased.

2. That he is informed and believes that the said L. M. Hood is not now, nor has he been at any time heretofore, acting in the capacity of executor, or as one of the executors of the last will and testament of said H. M. Hood, s'r.

3. That in the said last will and testament of the said H. M. Hood, s'r, the said Mary M. Hood, one A. B. Stone, and the said T. C. Hood were named as executors.

4. That the said A. B. Stone, as your orator is informed and believes, renounced the executorship conferred on him by the said last will and testament of the said H. M. Hood, s'r, and never acted as such at any time.

5. That the said Mary M. Hood and the said T. C. Hood have
76 been and are yet, acting as the executrix & executor of the last will and testament of the said H. M. Hood, s'r, dec'd.

6. That it was an error and mistake arising from a misapprehension of the facts which caused the naming of the said L. M. Hood as one of the executors of the said last will and testament of H. M. Hood, s'r, in said original bill; that the said T. C. Hood was the party who should have been included therein as a defendant.

7. That the original note for nine thousand dollars, due on the 1st day of April, A. D. 1862, mentioned in the original and 1st amended bill, was signed by H. M. Hood, s'r, and by H. M. Hood, j'r, but that the signature of the said H. M. Hood, j'r, was signed thereto without any prior understanding with or requirement of the said B. G. Shields, the payee in said note, and with no purpose or intent whatever to effect or impair the vendor's lien resting on the land sold, it being retained in the first instance to secure the payment of the purchase-money, part of which was represented by said note for nine thousand dollars;
77 that subsequently when, as alleged in the original & 1st amended bill, the said original note for nine thousand dollars was delivered to the said H. M. Hood, s'r, by the payee, B. G. Shields, and the said note for five thousand & fifteen dollars mentioned in said original and amended bill, taken for the balance then due on said note for nine thousand dollars, the name of the said H. M. Hood, for some reason unknown to your orator, was not signed thereto, but your orator

distinctly charges that the said note for five thousand & fifteen dollars was executed and delivered for a balance due on the said note for nine thousand dollars, and for no other considerations; and that the vendor's lien which existed to secure the payment of the note for nine thousand dollars, equally existed, and yet exists, to secure the payment of the said note for five thousand and fifteen dollars; and that the failure of the said H. M. Hood, j'r, to sign his name to the said last-mentioned note, in no way, & to no extent, injured or impaired the
78 validity & binding force of the said vendor's lien.

8. That to the end that the rights of all the parties at interest may in this cause be fully and finally adjudicated, your orator here prays to dismiss the said L. M. Hood as a defendant to the original and amended bill, and to exhibit the same, together with this amendment, against the said T. C. Hood, as one of the executors of the last will and testament of the said H. M. Hood, sr., dec'd, in connection with the said Mary M. Hood, the executrix of said last will and testament; and that the said T. C. Hood, as aforesaid, be taken and deemed as the co-def't of the said Mary M. Hood in this said cause, as fully & to all intents & purposes as if he had been named in said original and 1st amended bill as a defendant thereto; he, therefore, prays further that a subpœna be duly issued and served upon the said T. C. Hood, and that he be required to answer in his capacity as one of the executors of
79 the last will and testament of H. M. Hood, sr., dec'd, the original 1st amended and this amended bill, to the best of his knowledge, recollection, information, and belief, on or before the rule day in November, A. D. 1869, and that he have the relief prayed for in his original and amended bill against the said T. C. Hood, that was therein asked against the said L. M. Hood, as fully as if said relief had been originally asked against the said T. C. Hood; and he prays here for relief, general & special, as the nature and equities of the case demands or authorizes, & as in duty bound he will ever pray.

CHANDLER & CARLETON,
WALTON & DE NORMANDIE,
Solicitors for Comp't.

NOTE.—The answer of the said T. C. Hood under oath is waived, and any and all further answer from the def'ts L. G. Scogin & J. S. Hanna, under oath or otherwise, to this amended bill is hereby waived.

CHANDLER & CARLETON,
WALTON & DE NORMANDIE,
Solicitors for Comp't.

80 And afterwards, to wit, on the 16th day of August, A. D. 1869, the following entry appears on the minutes of the court:

Order of court on application of compl't for leave to amend bill, &c.—Enter'd August 16, 1869.

MONDAY, *August 16th*, 1869.

DE CORDOVA, ASSIGNEE OF Z. BARTLETT, b'k'pt,
vs.
L. M. HOOD ET AL. } 36. Ch'c'y.

In this cause, upon the motion of complainants to amend the bill,

& upon the motion of the defendants Scogan & Hanna, previously made to set aside the order entered as to costs, have been considered together, and the chancellor read the following opinion:

DE CORDOVA *vs.* HOOD ET ALS. } No. 36. Chancery.

In this case a decree pro confesso had been taken against the defendants at the September rules, 1868.

On motion of two of the defendants, Scogin & Hanna, the decree was set aside as to them, by order of the court, on the 26th of February, 1869, on condition that they should pay all the costs of the suit up to that time and file an answer to the bill on or before the rule day in April thereafter, and which time, by agreement of the parties, was extended until the rule day in May.

On the 1st March, 1869, and before any answer was put in by
81 Scogin & Hanna, the compl't amended his bill—as he had the right to do—as, of course, under the 28th rule. Upon motion of the defendants, filed 5th March, '69, to set aside the order of the court made 26th Febr'y, 1869, requiring them to pay all costs, &c., as a condition to the filing of an answer, such order was suspended on the 15th of April, 1869, and leave given to said def'ts to file an answer, and which was accordingly filed on the 26th of April, 1869.

On the 16th July, 1869, the complainant filed his application praying leave to amend his original and amended bill, by making another party defendant, and other material amendments, together with his affidavits in support thereof; and by agreement of the parties this application was to be considered by the court as having been made at the rule day in June last. The motion now made to amend the bill of compl't, and that of the defendants Scogin & Hanna, previously made to set aside the order as to costs, will be considered together.

The 28th chancery rule provides for the amendment of bills both before and after answer, and even after replications filed. It allows large discretion to the judge in the matter. I differ with the
82 learned counsel who opposes the amendment in his application of the 52 rule to the motion before the court. He seems to suppose that, because the defendants suggested in their answer that the bill was defective for want of T. C. Hood as a party defendant, the complainant should have set down the cause for argument upon that objection only. And so he should if he intended to contest the objection. But in this case he submits to the suggestion, acknowledges the defect, and asks to make the amendment. The facts set forth in the affidavits of compl't, while they do not show that degree of diligence which ought to have been exercised in ascertaining who were the proper parties defendants, are sufficient, I think, to justify the court in allowing the amendments on terms.

It is therefore ordered that the complainants have leave to file the 2nd amended bill on the payment of the costs connected with his motion, and that time be given to the defendants Scogin and Hanna until the rule day in November next to answer the same. It is further ordered that the order of the court of the 26th Feb'y last, which required
83 the said defendants to pay all the costs of the suit up to that time, be so modified as not to include the costs of other defendants.

T. H. DUVAL, *U. S. Judge.*

Amended bill.

Filed Aug. 17th, 1869.

M. HOPKINS, *Clerk.*

And thereupon, under the foregoing order, the complainant, on the 17th day of August, 1869, filed the 2d amended bill previously filed on the 16th July, 1869, as an exhibit, and the said amended bill was and is endorsed, filed August 17, 1869, M. Hopkins, clerk, and is set forth at length on pages 74 to 79, immediately preceding, and reference here made to the same to save repetition.

Subpœna to T. C. Hood, executor of H. M. Hood, dec'd, issued Aug't 19th, 1869.

And afterwards, to wit, on the 19th day of August, A. D. 1869, subpœna issued to T. C. Hood as executor of H. M. Hood, dec'd, which subpœna is endorsed, to wit:

Chancery. No. 36. United States circuit court in and for the western district of Texas, at Austin sitting. P. de Cordova, ass'ee, &c., vs. T. C. Hood & others, executor of H. M. Hood, dec'd. Harrison County, Texas. Issued 19 day of August, 1869. M. Hopkins, clerk. (Return:) Filed Oct. 4, 1869. M. Hopkins, clerk.

And is in words to wit:

84 *Subpœna to T. C. Hood, ex'r H. M. Hood, dec'd, issued Aug't 19, 1869.*

Circuit court of the U. S. for the western district of Texas, at Austin, sitting in chancery.

UNITED STATES OF AMERICA,
Western District of Texas:

The President of the United States to the marshal of the western district of Texas, and to all to whom these presents shall come, greeting:

Whereas Phinks de Cordova, a resident citizen of Travis County, western district of Texas, and assignee in bankruptcy of the estate of Zenas Bartlett, bankrupts, under the provisions of an act to establish a uniform system of bankruptcy throughout the United States, approved March 2d, 1867, hath filed his bills of complaint against T. C. Hood, as executor of the last will and testament of H. M. Hood, dec'd, with Mary Hood, executrix, and who are resident citizens of Harrison County, Texas, and against L. G. Scoggin and J. S. Hanna, who are resident citizen' of the county of Falls, Texas, in said district, who are made defendants.

We command you and every one of you, the defendants herein named, that, laying all other matters and excuse aside, you do cause an appearance to be entered for you in our court of chancery to the bills herein recited and exhibited against you, and that you do answer concerning such things as shall then and there be alleged against you,
85 and observe what our said court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process for contempt as the court shall award.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme

Court of the United States, and the seal of our said circuit court, at Austin, this 19th day of August, A. D. 1869.

[L. S.] MATTHEW HOPKINS, *Clerk.*

T. C. HOOD, *Executor, &c.*

Appearance is to be entered on or before the first Monday of November next, November rules; otherwise the bill may be taken as confessed.

M. HOPKINS, *Clerk.*

Came to hand Sept. 11th, 1869, & executed Sept. 15th, 1869, by delivering to T. C. Hood, *a* person, a true and certified copy of the within subpœna in chancery.

A. P. BLOCKER, *U. S. Marshal.*
By T. B. JONES, *Deputy.*

Motion to take from the files.—Filed Sept. 7, 1869.

And afterwards, to wit, on the 7th day of Sept'r, 1869, the defendants Scogin & Hanna, by their solicitors, Hancock & West, filed the following motion, endorsed, to wit:

Chancery. No. 36. P. de Cordova, ass'ee, vs. L. M. Hood et als. Motion to take from the files a certain instrument of writing improperly among the papers. Filed Sept. 7, 1869. M. Hopkins, clerk.

And is in words, to wit:

86 In U. S. circuit court, western district, at Austin, Texas.

P. DE CORDOVA, ASSIGNEE,
vs.
L. M. HOOD ET AL. } Chancery. No. 36.

And now, this day, comes the said defts Scogin & Hanna, in the above cause, by their solicitors, Hancock & West, and moves the court to take from the files of said cause a certain instrument of writing pretended to be styled a 2nd amended bill of said above-named complainant, and pretended to be marked, filed on the 16th day of July, 1869, or 17th August, 1869, but which said instrument of writing was marked filed without the permission of the court and in disregard of the order of said court, passed on 16th day of August, 1869, requiring said party complainant to pay certain costs of suit in said order specified, which said costs the said complainant has not paid. Wherefore said instrument appears to have been attempted to be filed illegally, in contempt of the order of court. They therefore move to take said papers off the files, as a nullity.

HANCOCK & WEST,
Sol's for Scogin & Hanna.

This motion set for hearing at next rule day.

HANCOCK & WEST.

And on the same day, to wit, on the 7th day of September, A. D. 1869, the following entry or order appears upon the rule order-book, in words, to wit:

87 *Order of def'ts Scogin & Hanna, dismissing bill for want of replication.—Filed & en'd Sept. 7, 1869.*

Ch'y. No. 36. In U. S. circuit c't, in west' dist., at Austin, Texas, Sept. term, 1869.

SEPT. 7, 1869.

P. DE CORDOVA, ASS'EE,
vs.
L. M. HOOD ET ALS. } No. 36. Chancery.

And now come said defendants Scogin & Hanna, by their solicitors, Hancock & West, this day, and ask the following order to be now entered as of course:

"It appearing from the papers in said above-entitled cause, that the said complainant hath failed to obey the order of the court made on 16th day of August, 1869, requiring the payment of certain costs before filing his so-called second amended bill, and it also appearing from the papers and records in said cause, that the said complainant has wholly failed within the time required by law to file his replication to the sworn answer of the said defendants Scogin & Hanna, filed on the 20th April, 1869, it is therefore ordered by the court that the said complainant's bill be dismissed as to the said def'ts Scogin & Hanna, and that the proper and lawful costs of this suit be taxed by the clerk against said complainant, and execution issue therefor." The clerk will, under rule No. 66, enter the above order as of course, at once.

HANCOCK & WEST,
Solicitors for Scogin & Hanna.

SEPT. 7TH, 1869.

Filed & enter'd Sept. 7, 1869.

M. HOPKINS, *Clerk.*

And afterwards, to wit, on 1st October, 1869, the following entry appears at Oct. rules on the rule or order-book, to wit:

88 *Entry rule-book Oct. 1, 1869.*

FRIDAY, *Oct.* 1, 1869.

P. DE CORDOVA, ASS'EE,
vs.
L. M. HOOD ET AL. } No. 36.

And now comes Walton & de Normandie, sol's for complainant, and file their motion to set aside order of dismissal, ent'd at Sept. rules and affidavit in support of said motion, Oct. 1, 1869; and sets the same for hearing on the rule-day in Oct. 1869.

M. HOPKINS, *Clerk.*

The motion of complainant to set aside the order of dismissal is endorsed, to wit:

In chancery. No. 36. U. S. circuit court, Austin. De Cordova, ass'ee, vs. Hood et al. Motion to set aside order of dismissal, ent'd Sept. rules. Filed Oct. 1, 1869. M. Hopkins, clerk.

And is in words, to wit:

Motion to set aside order of dismissal.

Filed & ent'd Oct., 1869.

M. HOPKINS, *Clerk.*

In circuit court U. S. west dist. Tex., at Austin.

P. DE CORDOVA, ASSIGNEE, PL'FF,
vs.
HOOD ET AL., DEF'TS. } In chancery.

And now comes the plaintiff in this cause, and moves the court to set aside the judgment of dismissal enter'd by the def'ts L. G. Scogin and J. S. Hanna, at September rules, A. D. 1869, and for cause of motion here, refers to the affidavit of P. de Cordova herewith filed, & to the orders of court of record in this cause, and asks leave to refer to them & each of them, as often as may be necessary for the purposes of this motion.

P. DE CORDOVA, *Assignee.*
By CHANDLER, CARLETON & WALTON, *Sol's.*

This motion is set for hearing on the rule-day in Oct. A. D. 1869, or as soon thereafter as it can be heard by the court.

C. & C. & WALTON,
Sol's for Pl'ff.

89 And on the same day in support of the foregoing motion, the following affidavit was filed, endorsed to wit:

In chancery. No. 36. De Cordova, ass'ee, vs. L. M. Hood et al. U. S. circuit court, Austin. Affidavit in support of motion to set aside order of dismissal. Ent'd Sept. rules. Filed Oct. 1, 1869. M. Hopkins, clerk.

And is in words to wit:

Circuit court U. S. west. dist. Tex., at Austin.

P. DE CORDOVA, ASSIGNEE,
vs.
HOOD ET ALS. } In chancery.

And now comes the pl'ff, P. de Cordova, assignee, &c., and being duly sworn, states under oath that, in obedience to the order of this honorable court, adjudging certain costs against him as pl'ff in this cause, of the date the 16th day of August, 1869, he applied at once to the cl'k of the court, M. Hopkins, esq., to render to affiant the bill of cost so awarded against him; that he did this prior to taking or offering to take any further step to make progress in preparing said cause for trial; that the said cl'k then and there stated that he did not have time to make any bill of costs, and that this affiant might consider the said costs paid; that therefore, affiant, considering the said cost was paid, it being cost due to the said cl'k alone, took further action in said cause, as if said *cause* had been actually paid, being at
90 all times ready and willing to pay the same, whenever the said clerk would intimate a desire to receive it. And being further sworn, he says that he did not file a replication in said cause to the answer of the def'ts Scogin & Hanna, because the honorable court, in

its order allowing this pl'ff to amend his bill, allowed the said defendants Scogin & Hanna, until the rule-day in November, A. D. 1869, in which to answer the said amended bill allowed to be filed by the court; and that it would have been manifestly improper and in violative of the practice of the court to have filed any replication until after the expiration of the time allowed by the court in which said defendants Scogin & Hanna might answer said amended bill. Affiant says that the cost charged against him by the order of the court aforesaid, was & is trivial in amount; that it was not on account of any indisposition on his part to pay said cost, nor did he intentionally or wilfully disregard the order of the court; but, on the contrary, was anxious to comply with the order of court literally, & only failed to do so from the facts above stated; that he is not personally interested in the event of this suit save to a very limited extend; that he acts in behalf of the estate of Z. Bartlett & the creditors thereof; that in
91 paying out money to discharge said, he would not have paid out his own money, but the money of the estate; that to have paid said cost would have been no loss to him individually. & further he says not.

P. DE CORDOVA,
Assignee of Z. Bartlett.

Sworn to & subscribed before me this 1st October, 1869.
M. HOPKINS, *Clerk.*

And afterwards, to wit, on the 25th day of October, A. D. 1869, the following entry appears upon the minutes of the court:

United States circuit court sitting in chancery, at Austin, Oct. 25, 1869.

92 *Order of court on motions of def'ts Scogin & Hanna to take from the files 2d amended bill, and to conform to order ent'ed at Sept. rules dismissing bill, 25 Oct.*, 1869.

U. S. circuit court, west'n dist. Texas.

DE CORDOVA, ASSIGNEE, &C., *vs.* HOOD AND OTHERS. } No. 36. In chancery.

On the 16th August last, this court ordered that compl't have leave to file his 2nd amended bill on the payment of certain costs, and time was given to defendants Scogin & Hanna until the rule day in November thereafter to answer the same.

The said defendants, on rule day, in September, (the 7th,) under rule No. 66, entered an order, as of course, dismissing the compl'ts' bill as to them, for failing to obey the order of the court as to the payment of costs, and for not filing his replication to the sworn answer of said defendants. On the same day, the said defendants filed their motion to take from the files of the cause the said 2nd amended bill, because the order of the court as to costs had not been complied with, and because said bill had been filed without leave of the court. On the 1st Oct., '69, the compl't' moved to set aside the above-mentioned order of dismissal, and, in support of the same, submitted the affidavit of
93 compl't, from which it appears that he called upon the clerk without delay for a bill of the costs, but that the clerk told him he had not time to make the same out, and might regard them as paid, &c.

The 2nd amended answer has two file marks upon it, one of the 16th July, and the other of the 17th August, 1869.

While the order of the court as to the payment of costs cannot be considered as having been complied with by compl't, still he has shown that he made such effort and diligence to do so as should exonerate him from any intention of disregarding the order. It was his duty, however, when the clerk declined to make out a bill of costs, either to have called the notice of the court to the subject, asking that the clerk might be required to make out the same, or to have deposited with the clerk such an amount as would have authorized that officer to have certified that the costs were paid.

Upon a consideration of all the facts, I do not think it would be equitable to permit the order of dismissal of complt's bill as to Scogin and Hanna to stand confirmed, or that the motion to take from the files the 2nd amended bill should be allowed. It is therefore ordered that
94 said dismissal entered as of course be set aside, and that the motion of defendants Scogin and Hanna, to take the 2nd amended bill from the files be overruled. But inasmuch as the compl't failed to comply strictly with the order of the court in regard to the payment of costs, as required, on the 16th August last, it is now ordered that he pay the costs connected with the motions upon which this present order of the court is based within one week from this date, and that upon his doing so, the said 2nd amended answer be held as properly filed on the 17th August, 1869, and that the def'ts Scogin & Hanna have time until the 1st Monday of December next, (being rule day,) to answer the same.

T. H. DUVAL,
U. S. Judge.

OCT. 25TH, 1869.

95 And afterwards, at November rules, to wit, on the 1st day of November, A. D. 1869, came the compl'ts, by their solicitors, and filed and was entered judgment pro confesso against T. C. Hood, executor, and Mary Hood, executrix of H. M. Hood, dec'd, in word, to wit:

Pro confesso ent'ed Nov. 1, 1869, *against Mary Hood & T. C. Hood, executors of H. M. Hood, dec'd.*

Filed & enter'd Nov'r 1, 1869.

M. HOPKINS, *Clerk.*

In the circuit court U. S., at Austin. November rules, A. D. 1869.

P. DE CORDOVA, ASSIGNEE OF Z. BARTLETT, compl't,
vs.
MARY HOOD & T. C. HOOD, EXECUTORS OF H. M. Hood, dec'd, L. G. Scoggin and J. S. Hanna, defendants. } No. 36.

And now comes the complainant, P. de Cordova, assignee of the bankrupt estate of Z. Bartlett, and because the defendants Mary Hood & T. C. Hood, executors of H. M. Hood, dec'd, have failed to appear and enter their appearance in this case, as they were by law and the practice of this court bound to do, on or before the November rules, A. D. 1869, they having been duly served with subpœna more than twenty

days prior to said rule day, exclusive of the day of service, takes his bill of complaint in this case, and all the matters and things in the original & amended bills alleged as confessed. And it is here by the court ordered and decreed, that the bills of complaint, original & amended, of the complainant be, as to the defendants Mary Hood & T. C. Hood, executors of H. M. Hood, deceased, and the same are hereby, taken as confessed, and the cause order'd to proceed.

CHANDLER & CARLETON,
W. M. WALTON,
For Complainant.

96 And afterwards, to wit, on the 6th day of December A. D. 1869, the following entry appears in the rule-book:

P. DE CORDOVA, ASS'EE,
vs.
HOOD ET ALS. } 36. Chan'y.

And now comes the solicitors of complain't and file their replication to the answer of the defendants.
Dec. 6, 1869. M. HOPKINS, *Clerk.*

The replication is endorsed, to wit:
No. 36. De Cordova vs. Hood et al. Replication. Filed December 6, 1869. M. Hopkins, clerk.
And is in words, to wit:

Replication to the answers of Scoggin & Hanna.

Filed Dec. 6, 1869.

M. HOPKINS, *Clerk.*

In circuit court U. S. In chancery, at Austin.

P. DE CORDOVA, ASSIGNEE,
vs.
MARY M. HOOD, T. C. HOOD, ET AL. } No. 36.

Replying to the answer of defendants L. G. Scoggin and J. S. Hanna, this repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficienc'es of the said answer, for replication thereunto saith that he will aver and prove his said bill and amended bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said an-
97 swer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct. And humbly prays, as in & by his said original and amended bills he hath already prayed.

CHANDLER & CARLETON,
WALTON & DE NORMANDIE,
Solicitors for Compl'ts.

And afterwards on, to wit, March 1870, the following agreement was filed:

(Endorsed:) No. 36. Chancery, P. de Cordova, assignee, vs. T. C. Hood et al. Parties' agreement as to taking evidence. Filed March 18, 1870. M. Hopkins, cl'k.

And is in words, to wit:

Agreement as to testimony.

Filed March 18, 1870.

M. HOPKINS, *Clerk.*

It is agreed in the above cause that the time for taking evidence for each party shall extend to the 25th of May, 1870, and not longer except by special agreement or order of the court, and it is further agreed that all evidence in said cause may be taken by either party to said suit in accordance with the rules governing the taking of depositions in the State courts, with the privilege to both parties to open and examine said evidence at any time without requiring an order of court for the publication of testimony.

Mar. 18th, 1870.

CHANDLER, & CARLETON & WALTON,
Sol's for Complainants.

HANCOCK & WEST,
Sol's for Scogin & Hanna.

98 Afterwards, to wit, Austin, Texas, January 20, 1871, the following entry appears upon the minutes of the court:

Cause set for hearing Jan'y, 20, 1871.

AUSTIN, TEXAS, *January* 12, 1871.

P. DE CORDOVA, ASS'EE,
vs.
L. M. HOOD ET AL. } No. 36.

On this day this cause being called, came the complainant, by Chandler & Carleton and W. M. Walton, his solicitors, and the defendants, by Hancock & West, and thereupon, on motion, the cause was set for hearing on the 23d inst., ensuing Monday.

And afterwards, to wit, on the 23d day of January, A. D. 1871, the following entry appears upon the minutes of the court, to wit:

Entry.—January 23d, 1871.

MONDAY MORNING, *January 23d*, 1871.

P. DE CORDOVA, ASS'EE,
vs.
L. M. HOOD ET AL. } 36. Chancery.

This cause came on to be heard on the bill, answer, and evidence, and the same was argued, and the case was held for consideration by the court.

TESTIMONY.

On the ninth day of April, A. D. 1870, there issued out of the clerk's

office at Austin, under the rules of practice governing proceedings in the court, a commission to take the testimony of B. G. Shields, Zenas Bartlett, and S. D. Barclay, citizens of Falls Co., Texas, and witnesses for plaintiff, (compl't,) accompanied with certified copies of the direct and cross-interrogatories filed by compl't and defendants, which, to-
99 gether with the answers thereto, were duly returned into this court by the commissioner appointed to take the evidence, and were filed and read in evidence in this cause, and which depositions are in words, to wit:

100 U. S. circuit court, western district of Texas, at Austin.

UNITED STATES OF AMERICA,
Western District of Texas:

The President of the United States of America to any officer authorized by the laws of the State of Texas, and the practice of the district court of the State to take depositions of witnesses, greeting:

Know ye that, reposing trust in your integrity and fidelity, we have and by these presents do nominate, constitute, appoint, commission, and require you to cause B. G. Shields, Zenas Bartlett, & S. D. Barclay, who are resident citizens of the county of Falls, western district of Texas, to come before you at such time and place as you may appoint; and that you then and there carefully and fully examine then the said witnesses upon oath or affirmation first to be taken before you touching the amended interrogatories and cross-interrogatories.

1st. That you reduce their answers so taken to writing in proper form, and cause the same to be subscribed and sworn to before you by said witnesses.

2nd. That you certify, under your hand and seal of office, that said answers were sworn to and subscribed before you.

3rd. That you seal up, in an envelope, the answers so taken, together with the amended interrogatories, and this commission, with your name written across the seal thereof.

4th. That you endorse on said envelope the names of the parties to said suit as well as the names of said witnesses.

5th. That you direct the package to the clerk of the circuit court of the United States for the western district of Texas at Austin.

101 6th. That, if said package be transmitted by the public mail, the postmaster shall endorse thereon that he received it from your hands and sign his name thereto; which answers when so taken and returned as aforesaid, *and* to be read in evidence in a certain suit now pending in said circuit court of the United States, sitting in chancery, at Austin, wherein Phineas de Cordova, assignee in bankruptcy of the estate of Zenas Bartlett, is complainant, and T. C. Hood and Mary Hood, executor and executrix of H. M. Hood, senior, deceased, and J. S. Hanna, and L. G. Scogin are defendants—said cause numbered 36 on the chancery docket of said court.

Herein fail not, but make due return of this commission, with your proceedings, by virtue thereof, to our said circuit court at Austin before the return day of the next term to be begun and held at Austin on the first Monday of June next, A. D. 1870.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said court at Austin this 9th day of April, A. D. 1870.

[L. S.] M. HOPKINS, *Clerk.*

102 In chancery.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain cause, now depending and at issue in the circuit court of the United States for the western district of Texas, holding sessions at Austin, wherein P. de Cordova, assignee of the estate of Zenas Bartlett, bankrupt, is complainant, and Mary Hood, and T. C. Hood, executrix and executor of the last will and testament of H. M. Hood, senior, deceased; J. S. Hanna and L. G. Scogin are defendants, said witnesses being B. G. Shields, Zenas Bartlett, and all resident citizens of the county of Falls, and State of Texas.

Interrogatories to be propounded to B. G. Shields.

Inte'y 1st. Do you know the parties, complainants and defendants in the title to these interrogatories named, or any, or either, and which of them; and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Inte'y 2nd. The object of this suit or bill in chancery is to recover judgement on a certain note for $5,015 *dollars*, and to enforce a vendor's lien on two certain tracts of land in the county of Falls, in the State of Texas. The note is in the words & figures substantially as follows, to wit:

103 $5,015.] "FALLS CO., TEXAS, *April 1st*, 1860.

"On or before the first day of April, eighteen hundred and sixty-two, I promise to pay to the order of B. G. Shields the sum of five thousand and fifteen dollars, for value received, negotiable & payable at the Union Bank in New Orleans, La.

(Signed) "H. M. HOOD, SEN."

The land is described in an instrument of writing executed by yourself, and your wife, Mrs. E. A. Shields, to H. M. Hood, sen., dated 5th day of Feb'y, 1859, copy of which instrument is appended to these interrogatories for your inspection. Please state whether or not you know what said note was given for; if yea, for what? State its history. State all you know about the making thereof. State the whole transaction as you know it which caused the said note to be executed.

Inte'y 3. If you know, please state how the payment of the said note was secured; what was the consideration of said note? Now, state, if you have not already done so, how the payment of the said note was secured? If you say that the payment of said note was secured by a vendor's lien, then state on what land or lands the said lien rested. In whose favor did it exist? When, if ever, was the lien released? Who released said lien? If you say that the said vendor's lien existed
104 in your favor, then state whether or not you ever released it. If yes, then say when, to whom, where, & for what consideration. State all you may know about said transaction if any such one was ever had.

Inte'y 4th. To whom was the original note for $5,015, *dollars*, a copy of which is set out in interrogatory 2nd, executed & delivered? If you know, state the consideration. If given for any other note or writing, state what note or writing, giving date, parties, amount, & consideration, and how secured, whether by lien or otherwise; if by lien, state on what the lien rested. In whose favor was said lien? If in your

favor, then say if you ever released the same? If so, when, where, and to whom was the release made? Who was present? State the whole transaction as it occurred.

Inte'y 5th. Please state whether or not you ever sold, traded, and delivered the note, a copy of which is set out in interrogatory 2nd, to any one. If yea, to whom, when, and for what consideration? If you state that you sold said note to Zenas Bartlett, state what, if anything, you said to him in regard to the manner in which the payment of said note was secured? Did you tell him what was the consideration thereof? State all, as nearly as you can remember, what was their said by you in regard to the consideration of said note, and how its ultimate payment was secured. State whether or not the matter of the
105 manner in which said note was secured, was ever discussed between you & Zenas Bartlett. If yes, tell all that was said.

Inte'y 6th. State whether or not you ever executed to any person a deed for the land described in the obligation, a copy of which is attached hereto, marked Exhibit No. 2. If so, when, to whom, where; the consideration therefor; and who joined you in executing the same? If no, why not? Please state all the facts. Why was the original Exhibit No. 2 worded, as it is, in regard to the matter of the deed herein contemplated to be made at a future day? When was the deed to be made; upon what contingency was the deed ever executed? If no, why not?

Inte'y 7. State whether or not you have acquired any other homestead since you sold the land described in the obligated *form* you and wife to the said H. M. Hood, senior; and whether or not you have and own any other homestead now?

Inte'y 8th. State whether or not either the defendant', J. S. Hanna or L. G. Scogin, ever called upon you at any time prior to the 24th day of May, 1863, to know if H. M. Hood, senior, or any one else had paid you all the purchase-money for said land described in Exhibit No. 2? If you have stated they did not, please state what you would
106 have told them if they had called upon you, and made such an inquiry, and all that you would have told them?

Inte'y 9th. State whether or not you ever had any conversation with H. M. Hood, sen., in regard to a vendor's lien, existing to secure the ultimate payment of the said 5,015 dollars. If yea, state what was said; how was this matter regarded by the said Hood? Did he ever make any request of you, touching said vendor's lien; if yes, what was it?

Inte'y 10th. If you have answered that you sold, assigned, or transferred and delivered the note for 5,015 dollars, to Z. Bartlett, please state what, if anything, was said about your liability thereon, either primarily, or otherwise. To what extent, and on what contingency were you to become liable to pay said or any part thereof? State fully what was the agreement upon that subject.

Inte'y 11th. State whether or not, at or about the first day of January, 1860, or at any other date, the said H. M. Hood, sr., either privately or publicly, stated in your presence, or within your hearing, or knowledge, anything in regard to the purchase-money mentioned in Exhibit No. 2, as having all been paid off and discharged. If yes, what
107 did he say? If not, how otherwise was and are the facts upon that subject? Please state fully all you know upon that subject, as if you were particularly inter'ogated, and particularly whether or not you in any way acquiesced in such statement. State whether or not such statement, if made at all, were made in Falls County, Texas. If not, then state where such statement was made, if made at all.

Inte'y 12. State fully the history of the $5,015 note; how did it come into your hands. State why it was executed for $5,015. State whether or not the whole of the purchase-money mentioned in Exhibit No. 2, has ever been paid. If not, what part remains unpaid?

Inte'y 13. State if you know where the defendants J. S. Hanna and L. G. Scogin resided in the month of May, 1863. State also where you resided in the month of May, 1863, and how far it is, if you know, from the town of Marlin, Falls County, Texas; and state also, if you know, how far the land you sold to H. M. Hood, senior, lies from the town of Marlin, Texas.

Inte'y 14. State whether or not you were acquainted with the treasury notes of the so-called Confederate States of America, known as compound-interest notes, of the so-called Confederate States of America, the interest on which was two cents per day, on or about the 23rd
108 day of May, 1863, in the town of Marlin, Falls County, Texas, in gold, and what such notes could have been sold for in gold, at the time and place named? If yea, then state such value.

Inte'y 15. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the object of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Interrogatories to be propounded to Zenas Bartlett.

Inte'y 1st. Do you know the parties, complainants and defendants in the title to these interrogatories named, or either, or any, and which of them, and how long have you known them, respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein?

Inte'y 2nd. State whether or not you ever purchased a note from B. G. Shields, signed by H. M. Hood, sr; if yea, please state when you purchased it; how much was it for? Please read the copy of the note set out in 2nd interrogatory to B. G. Shields, and state whether or not it is a substantial copy of the note you purchased from B. G. Shields.

109 Inte'y 3rd. If you have stated that you have purchased a note from B. G. Shields, on the said H. M. Hood, s'r, please state if the money due thereon was ever paid to you, or any part thereof. If not paid, then state what became of said, the note. Have you disposed of it; if so, how, when, and to whom?

Inte'y 4th. If you have stated that you purchased a note from Shields, on H. M. Hood, s'r, state whether or not the said Shields told you for what the note was given. If yea, state what was said, and all that was said; what, if anything, was said about vendor's lien. If any land was mentioned, state what land; describe it if you can. Did he tell you what was the consideration of said note? If yes, repeat what he said. In buying said note from Shields, state what you then understood as to how the ultimate payment thereof was secured. What, if anything was said about vendor's lien, when you bought the note. Please be particular and state whether or not the said Shields told you that the lien on the land for which the note was given, had been discharged. State particularly what you relied upon as security for the payment of the note when you purchased it.

110 Inte'y 5th. State whether or not you know, or had been informed of the sale of the land by H. M. Hood, s'r, to the defendants J. S. Hanna and L. G. Scogin before the sale was made?

Inte'y 6th. State whether or not the said H. M. Hood, s'r, ever stated in your presence or within your knowledge that he had fully paid off and discharged the last incumbrance upon the land that he had purchased from the said B. G. Shields, and particularly whether or not you ever acquiesced in any such statement.

Inte'y 7th. State whether or not you are acquainted with the value of the treasury notes of the so-called Confederate States of America, known as compound-interest notes, the interest on which was two cents per day, on or about the 23rd day of May, 1863, in the town of Marlin, Falls County, Texas, in gold, and what such notes could have been sold for at the time and place named, in gold? If yea, then state such value.

Inte'y 8th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, on the matters in question in this cause?

111 If yea, set forth the same fully and at large in your answer?

Interrogatories to Samuel D. Barclay.

Inte'y 1st. Do you know the parties, complainant and defendants in the title to these interrogatories named, or any or either of them, and how long have you known them respectively, or such of them as you do know? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Inter'y 2nd. State what office you held, if any, in the years 1859, 1860, & 1861. If you have answered that you were clerk of the county court of Falls County, Texas, please state whether or not you recorded a deed in said county records from B. G. Shields and E. A. Shields to H. M. Hood, s'r, to a tract of land in said county? If you answer you did, and have a copy of such a deed, please attach it to your answer to this interrogatory; and please be particular to state the date when you recorded it in the county records of said county, kept for the recording of deeds; & state whether or not the record of said deed was indexed in an index in the county clerk's office, kept for that purpose. If you have answered any of the above questions in the affirmative, please state how you know the facts you have stated in answer to the foregoing question?

112 Inte'y 3rd. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER & CARLTON,
W. M. WALTON,
Solicitors for Complainants.

The respondents in the above-stated cause, T. C. Hood, Mary Hood, J. S. Hanna, L. G. Scogin, or their attorneys of record, John Hancock & C. S. West, esq'r's, will take notice that ten days after the service of a copy of the within & foregoing interrogatories and of the notice, the complainant will apply to the clerk of the circuit court of the United States for the western district of Texas for a commission to take the answers of B. G. Shields, Zenas Bartlett, and Samuel D. Barclay, who reside in the county of Falls, in the State of Texas, the said answers to be read in evidence on behalf of the complainant on the trial of the

suit of P. D. Cordova, assignee of Zenas Bartlett, bankrupt, vs. T. C. Hood, Mary Hood, J. S. Hanna, & L. G. Scogin, now pending,
113 in the aforesaid circuit court in chancery.

W. M. WALTON &
CHANDLER & CARLETON,
Solicitors for Complain't.

114 THE STATE OF TEXAS, *County of Falls:*

Know all men by these presents I, B. G. Shields, of the State and county aforesaid, have bargained and sold, and by these presents do bargain and sell to H. M. Hood, of the county of Harrisin, State aforesaid, the tract of land where I now reside, comprising eighteen hundred acres, for the sum of twenty-seven thousand dollars, to be paid to me by said Hood in installments, as follows: Four thousand dollars ($4,000) on the 10th day of May next, in the city of New Orleans, for which the said Hood has given me a draft on B. C. Cummings & Co., of said city, payable at that time; five thousand dollars ($5,000) on the first day of January next, for which he has likewise given me a draft on the same house, payable there; nine thousand ($9,000) on the first day of April, eighteen hundred and sixty-one, with interest at the rate eight per cent. per annum from the 1st day of January, 1860, for which he has executed to me his promissory note, negotiable and payable at the City Union Bank, in the city of New Orleans, at the time mentioned; and nine thousand dollars on the first day of April,
115 eight hundred and sixty-two, with the same rate of interest from the same time, 1st January, 1860, and negotiable and payable at the same bank in New Orleans.

The tract of land herein sold consisted of two bodies—one of eleven hundred & the other of seven hundred acres—which *is* contiguous to each other for such extent, and so situated as to constitute one tract in convenient form. The boundaries of the eleven-hundred-acre tract are as follows: Beginning at the southwest corner of the tract of four hundred acres, heretofore sold and deeded to G. E. Franks out of the lower fifteen hundred acres deeded to me by J. T. Chambers, on the 13th day of November, 1851: thence by a line south 45 degrees west to the river; thence down the meanderings of the river, two thousand eight hundred and twenty varas, to a corner; thence north 40 dg. east to the southeast corner of the tract sold to G. E. Franks as aforesaid; thence along southern boundary of said tract to the place of beginning, the length of line being near 1,435 varas. The boundaries of the seven hundred are as follows: Beginning at a stake, designated as the
116 southwest corner of a tract, 640 acres, surveyed for the site of the town of Marlin; thence by a line south 45 degrees west, to north line of said upper fifteen hundred acres, the distance being near seventeen hundred *ten* and nine varas; thence north 45 degrees east to the northeast corner of said fifteen hundred acres; thence south 45 east to the place of beginning. These two tracts, comprising eighteen hundred acres, I sell and convey by this deed to H. M. Hood for the consideration aforementioned, together with all and singular, the r*ites*, hereditaments, and appertenances to the same belonging or in anywise appertaining: To have and to hold all and singular the premises aforesaid unto the said Hood, his heirs, and , forever. And upon the completion of the payment aforementioned, I do bind myself, my executors, and administrators, to warrant and defend the said premises to the said Hood, his heirs, and assigns, against all persons lawfully claiming the same, or any part thereof; and do bind myself to surrender pos-

session of said premises the 1st day of January, eighteen hundred and sixty, (1st day of January, 1860,) reserving the rite of authority & occupying the same exclusively until that date.

In witness whereof I hereunto offer my hand and seal this
117 5th day of February, 1859.

(Signed) B. G. SHIELDS. [SEAL.]
E. A. SHIELDS. [SEAL.]

118 In U. S. circuit court at Austin, Texas.

P. DE CORDOVA, ASSIGNEE, }
vs. } Chancery. No. 36.
T. C. HOOD ET ALS. }

Cross-interrogatories propounded to Zenas Bartlett.

1st. Please state fully the date and amount of the note enquired about in inte'y 2nd to you, by whom signed, to whom payable and when, and the rate of interest, if any; also state at what time you purchased it or obtained this note from Mr. Shields. State the day of the month and year, and what was the consideration passing from you to Shields. State it fully.

2nd. State if Shields wrote any words such as the following above his endorsement on the back of the note when he transferred it to you, viz: "For value received, I assign, transfer, set over, and deliver the within note, with all the equitab'e and vendor's lien on the land for the purchase-money for which it was given to Z. Bartlett. (Signed) B. G. Shields," or any words at all; if so, state what he did write. Was not the note endorsed to you by Shields in blank, as notes are usually endorsed? Did you write afterwards any words above Shields's
119 signature in his absence; and, if so, how come you to commit such an act? Was there anything said about the vendor's lien when the note was transferred to you by Shields, which authorized you to make such endorsement? Please state what was said by Shields to you, and by you to Shields at the date of the transfer of the said note by Shields to you. State all that passed and how did he happen to converse with you on the subject of the vendor's lien at the time you bought the said note.

3rd. State all you know, fully and particularly, giving all the facts as to the pecuniary condition of Shields, H. M. Hood, s'r, & H. M. Hood, j'r, during the period from April, 1860, to 1st Jan'y, 1866—what were their means. Could as much as $5,000 or $10,000 be made off of each them during the said period? How did you regard said persons in 1862, 1863, 1864, & 1865 as to solvency, and how did their neighbors regard them, and where did each of them reside during said period; and where did you reside; and where did said Scogin & Hanna reside?

4th. When did you first learn that the said note above asked about was, or pretended to be, a lien on any land? And state how did you learn it, and when, if ever, did you communicate such information to the said def'ts Scogin & Hanna. Give the month and year when you notified them?

120 5th. When did the def'ts Scogin & Hanna go into possession of the land purchased by them of Shields—in what month & year; and how long have they been in possession; and are they still in possession; and have they added any improvements to the place since their purchase? And if so, state in general terms what they are, and

what is about their cost. Would six thousand dollars more than pay for the improvements placed on said land by the def'ts Scogin & Hanna?

6th. Where were you living when Scogin & Hanna made their said purchase of H. M. Hood, or in 1863; how far from the land; where was the trade made? Did you or did any other person, to your certain knowledge, notify or give information to the said def'ts Scogin & Hanna that you or any body else claimed a lien on said land for the payment of said note? If so, state all the facts in your knowledge going to show that Scogin & Hanna, at the date of their said purchase of said land from Shields, had notice or had reasonable cause to believe that the note transferred to you by Shields was a lien on the land. Have you reason to believe they had notice; and state the facts going to sustain your belief. Do you believe they purchased the land in bad faith and with a knowledge of the said pretended vendor's lien? State why they did,
121 if they knew of said pretended lien. State why did they not take up the note. Why did you not present it at that date to said H. M. Hood, s'r, or to the said Scogin & Hanna?

7th. In May, 1863, and shortly before and shortly after these dates in Falls County, what species of money was in circulation in Texas, and especially in Falls County, and by whom was it issued? If you say confederate treasury notes were then in general circulation in Falls County, say about these dates, with many persons, if not *at* all, were not confederate notes in the purchase of property at par or nearly at par for some time in and about May, 1863, with coin; and did not many persons take it about that date at par for debts due them; and did you not about that date take it at par with coin in payment of debts due to you; and did you not know about that date persons take said confederate money at par for their land and property?

8th. State what was that class of confederate notes that bore interest at the rate of two per cent. per day worth about May, 1863, in Falls County. Were they not considered by many persons in said county, about that date, at about on a par with coin; and were they not received frequently at par about that date in payment of debts and in
122 the purchase of property? State fully all facts on this subject in your knowledge.

9th. What, about May, 1863, was the value of the land purchased by the said def'ts Scogin & Hanna? Was it not worth about $20 or $25 per acre?

10th. State all the facts in your knowledge, as to how the original note given by H. M. Hood, sr., & H. M. Hood, jr., to said Shields for $9,000.00, payable on 1st day of April, 1862, was taken up? And state what was the condition of H. M. Hood, sr., as to solvency, in April, 1860.

HANCOCK & WEST,
Sol's for S. & Hanna.

123 In U. S. circuit court, at Austin, Texas.

P. DE CORDOVA, ASSIGNEE, *vs.* T. C. HOOD ET ALS. } Chancery. No. 36.

Cross-interrogatories to B. G. Shields.

1st. In the deed from you and your wife to H. M. Hood, senior, a copy of which is attached to the interrogatories to you, the following recital

occurs in describing or attempting to describe the notes taken for the purchase money. "Nine thousand dollars ($9,000) on the first day of April, 1861, with interest at the rate of 8 per cent. per annum, from the 1st day of January, 1860, for which he (H. M. Hood, senior,) has executed to me his promissory note, negotiable and payable at the Union Bank in the city of New Orleans, at the time mentioned, and nine thousand dollars ($9,000) on the first day of April, 1862, with the same rate of interest from the same time, 1st January, 1860, negotiable and payable at the same bank in New Orleans." State if the recital corresponds strictly with the facts; and, if it *is* not, state in what does the recital differ from the facts. And, if you say the notes above described were not as recited, the individual notes of H. M. Hood, senior, but were the joint notes of H. M. Hood, senior, and H. M. Hood, junior, please state how the mistake in the recital occur'.

124 2nd. State whether or not, in the year' 1859 & 1860, and at the time when the above described notes of H. M. Hood, senior, & H. M. Hood junior, were taken by you, if both of them were not possessed of a large amount of personal property and other property, and were they not regarded by the community as solvent and able to meet their pecuniary obligations, and did you not so regard them yourself in 1859, 1860, 1861, 1862, 1863, 1864, & 1865? Answer this question fully. And also state what were the facts that induced you to take the joint note of H. M. Hood, senior, & H. M. Hood, junior, instead of the separate note of H. M. Hood, senior. Did not H. M. Hood, junior, sign the note as security thereon for H. M. Hood, senior? State why this personal security was taken. And if in answering the interrogatories-in-chief you say that there was some kind of an understanding between you and H. M. Hood, senior, that there was a vendor's lien to be reserved, why did you not express such agreement on the face of the notes, or on the face of the deed, and why was *it* not the lien secured by a mortgage? Please explain this fully; and also state fully who else besides yourself was present when the subject of retaining the lien was discussed between you and H. M. Hood, senior.

125 3rd. State fully all the facts with regard to the extinguishment by H. M. Hood, senior, of the joint note of himself and H. M. Hood, junior, for nine thousand dollars, maturing on 1st day of April, 1862, and bearing eight per cent. interest from 1st January, 1860. Did he not, in 1860, pay a large amount of said note, and he not give you a draft or order on New Orleans for the balance of said note, and was not payment of said draft refused; and did he not then execute to you *to* his individual note for $5,015.00, due 1st day of April, 1862, and did you not receive this in satisfaction of said joint note above asked about, and did you not deliver up to H. M. Hood, sr., said joint note; and did you not regard at that time H. M. Hood, senior, as good for the said note for $5,015.00, and did you not regard it as sufficiently secured by his individual responsibility alone; and if you did not, why did you surrender the note with the name of H. M. Hood, junior, then on it, and take no lien or mortgage for the amount? Please explain this fully, and state if you did not rely on the individual responsibility of H. M. Hood, senior. And was there anything said about *their* being any vendor's lien reserved to secure this note, ($5,015;) if so, how did it come to be said? Tell all about it.

126 4th. State in what year and what month did you transfer the note for $5,015, above referred to, to the bankrupt, Z. Bartlett. On the back of the note, it is asserted, that the following words are found immediately over your name:

"For value received, I assign, transfer, set over, and deliver the within note, with all the equitable and vendor's lien on the land for the purchase for which it was given, to Z. Bartlett.

(Signed) "B. G. SHIELDS."

Did you write these words or any other words over your signature when you endorsed the note to Z. Bartlett, or did you not simply endorse it in blank by simply writing your name across the back of it, and was it not transferred and endorsed in the usual way in settlement of your business with the bankrupt; and were you not, at the date of such endorsement, considered as good and able to pay the note, and were you not so regarded by Bartlett and the community, and are you not now solvent, and have you not sufficient property to pay the note? Was the said note ever protested, or have you ever been called upon to pay the note, or have you been sued on the note? Do you really suppose that Bartlett knew, or enquired at the time of the transfer, what was
127 the consideration that had passed from you to H. M. Hood, senior, for the note, or whether the note was secured by vendor's lien or not; and if you were good at the time, and endorsed the note, and H. M. Hood, senior, was also good at the time, and bound for the note, would it not have been rather unusual for Bartlett or any other person to enquire further, as how else the note was secured?

5th. Did you know of the trade and purchase by the def'ts Scogin & Hanna, of the land of H. M. Hood, s'r, before it occurred? If so, state about what date did it occur, and in what county, and where did you live at the time, and where did Z. Bartlett then live, and how far was the land from each of you? Did you, or any one to your knowledge, tell Scogin and Hanna that you or Bartlett or anybody else claimed a lien on the land for unpaid purchase-money before they bought, or did they, so far as you know, have, prior to their purchase, any knowledge of such claim for lien? Did they not go into possession of the property, and make improvements on it, and are they not still in possession of it? What was it worth at the date of their purchase? Did you, or Bartlett either,
128 so far as you know, ever say a word to the def'ts Scogin and Hanna, about any vendor's lien for the purchase-money prior to 1865 or 1866? If you did not, and if you did, state when you first mentioned it, and state any facts in your knowledge going to show ignorance on their part at the date of their said purchase, and the payment of the money, of the existence of the said lien? Be full and particular on this point.

6th. Were you living in Falls County in the year 1863? If so, what was then the ordinary and circulating medium of the country; and if you say it was confederate notes and bonds and State-treasury warrants, state if these confederate notes and bonds were not used in almost all the daily dealings and trades of the people; and state, as near as you can, what was the value of the interest-bearing notes of the Confederate States, and more particularly those notes that bore interest at the rate of two per cent. per day; state if they were not frequently sought after in May, 1863, as investments, and if they were not used at par, or nearly par, in the purchase of cotton, land, or other property. Be full on this point. State whether, at the time of this trade, the parties to it,
129 Scogin and Hanna, were merely private citizens, and state whether the trade was made for their private benefit, or made with a view of aiding and encouraging the rebellion against the United States; state fully all you know as to the purchasing power of confederate paper of the class above enquired about and its value.

United States circuit court in and for the western district of Texas, at Austin, holding sessions.

I, Matthew Hopkins, clerk of the circuit court of the United States for the western district, at Austin, do hereby certify that the foregoing pages contain a full and true copy of complaints, interrogatories, and the cross-interrogatories of the defendant as they appear on file in this court in case No. 36, chancery, entitled P. de Cordova, assignee, &c., vs. T. C. Hood et als.

In test. whereof I hereto set my hand and seal of court, at Austin, this 9th day of April, A. D. 1870.

M. HOPKINS, *Clerk.*

130 *Answer of B. G. Shields.*

First. In answer, I have known P. de Cordova five years; Messrs. Hanna and Scoggins for six or seven years; but a slight acquaintance with T. C. Hood, whom I suppose to be the younger son of H. M. Hood, sen'r. Do not know Mary Hood personally.

Second. Said note is substantially as set forth, a copy of that which was given by H. M. Hood, sen'r, to me to secure the payment of a balance of $5,015 of the last installment, to become due & payable to me in consideration of the certain tracts of land in question. The $5,015 note was given me in lieu of the original note of nine thousand dollars, after deducting a part payment thereon, still retaining the original lien, which was positively & unequivocally stipulated and agreed between us at the time of the execution of the said note of $5,015.

Third. The payment of said note was secured by its taking the place of the original note, after deducting the amount paid in advance. The consideration was the land in question, being balance payment, to become due and payable for the said land. The land was liable for its payment, which is described by a copy of deed hereto annexed, with the exception of the omission of one line in the field-notes of the survey of the seven-hundred-acre tracts. It existed in my favor, & the lien was never released by me. No such transaction was ever had for the release of said lien.

Fourth. The said $5,015 note, as stated, was executed & deliverd to me. It was given as the last payment on the said land. (See answers to second & third interrogatories.)

131 Fifth. I traded the note to Z. Bartlett sometime during the fall of 1862, for something over a hundred bales of cotton, delivered to me on the plantation of Geo. Robinson. I stated to Bartlett that the note was secured by the liability of land therefor, which I had sold to Mr. Hood, it having been executed to me by Hood for the balance due me in that transaction. Mr. Bartlett received the note from me, understanding the matter as I did.

Sixth. I never executed any other instrument, than the one described, to H. M. Hood, sr., in "Exhibit No. 2," and that was for the consideration of $27,000, as stated therein, and executed in conjunction with my wife. I was never applied to for any other conveyance, nor should I have made any other if applied to, without full payment of the whole amount of the purchase-money due on the land. The instrument or deed was drawn in the terms therein employed, to hold and continue the land sold, subject to the payment of the purchase-money. It is a form customary in such transactions, precluding the necessity of any other special instrument to secure the payment of the purchase-money.

Seventh. I have acquired another homestead, and still own one in Falls County.

Eighth. Neither Mr. Hanna, nor Mr. Scogin, nor any other person, that I remember of, ever applied to me for such information. If they had made such application to me, I should have stated to them
132 that I had received a protest from New Orleans, notifying me of the non-payment of the note given to secure the second instalment of $9,000, mentioned in the "Exhibit No. 2," also that I held Mr. Hood, sr., note to secure the payment of a balance of $5,015 due on the last installment of nine thousand dollars for said land.

Ninth. As stated in answer to second interrogatory, Mr. H. M. Hood, sr., executed to me the note for $5,015, to secure the payment of that amount remaining of the last installment, after deducting the amount paid me in advance, with the distinct understanding between us, that such payment of a part in advance, & the execution of his note to secure the payment of the balance at the time stated, made no difference whatever respecting the vender's lien, to secure the payment of said balance; in other words, that the land should continue just as liable to secure payment of said balance as before.

Tenth. By my endorsement on the note, I meant to transfer to Bartlett my right of property in the note & the vender's lien upon the land to secure its payment.

Eleventh. He never did to me, nor any one else within my knowledge. If he had done so I certainly could not, and should not have acquiesced in any such statement, the same being directly the reverse of the facts in reference to both of the last installments.

Twelfth. Already ans'd in my answers to preceeding interrogatories.

Thirteenth. J. S. Hanna resided in Robertson Co., and L. G. Scogins, about that time, as well as I can remember, moved from Robertson to Falls County. As to the precise time of the year of Mr. Scoggin's
133 removal to Falls Co., I am not certain. I now live and have lived for the past ten years, in eleven miles west of Marlin, in Falls Co. The tract sold to Hood is contiguous to to the 640-acre tract upon which Marlin is situated.

Fourteenth. After the year 1862, I paid but little attention to the value of confederate notes. After that period its depreciation was so rapid and so great, that but few were willing to take it. Those who received it, did so, generally, because there was scarcely any other circulating medium, and because it was considered a part of the military policy then prevailing, to enforce its circulation. It soon became worthless. I do not know, never having heard, that it could have been sold for gold, at any rate, at that time in this part of the country. The quotations, as published in the "Texas almanac," show a *decline*, between May 17 and June 20th, 1863, of eighty dollars in confederate notes for one dollar in coin.

Fifteenth. I know nothing further that might be of any benefit to either party.

B. G. SHIELDS.

Answers of Gen'l B. G. Shields to cross-interrogatories.

First. The recital in the instrument corresponds with the facts, except that, as well as I remember, the name of H. M. Hood, j'r, was also signed to these notes. Whether the notes were drawn in the singular or plural I do not recollect. The land was sold to H. M. Hood, sen'r,

and his responsibility, coupled with a vendors' lien, secured by the regular form and terms of the instrument, was deemed by me a suffi-
134 cient security. H. M. Hood, jr., accompanied his father to my house, and was represented by his father to be his agent, holding and managing for him a landed and planting interest, which he, H. M. Hood, sr., has acquired opposite to Waco. I do not remember why it was that H. M. Hood', jr., name was signed to the notes. The deed or instrument was prepared, to the best of my recollection, before the notes, and in the absence of Mr. Hood. The notes, after the arrival of Hood and son—their joint signatures was probably a suggestion of the moment and did not alter or take from the facts recited in the instrument—H. M. Hood, sr., did execute the notes to secure the payment of the amounts, and at the time, and for the considerations mentioned in the deed. The additional signature of Hood, jr., was simply that much more a gratuity not called for by nor altering the contract.

H. M. Hood, s'r, was represented, by those who knew him in Eastern Texas, to be a wealthy man. His son, H. M. Hood, j'r, was considered responsible and trustworthy, as far as I know. The reason for not taking a mortgage is shown by the terms of the instrument, by which the vendor's lien is plainly retained & held. I have already stated that I have no recollection of the reason why H. M. Hood, jr.'s name was signed in conjunction with that of his father, nor have I any recollection of who was present when the terms of the instrument securing therein the vendor's lien were discussed, if discussed at all. There never was any question between us on that point; it being considered, of course, that my obligation of warranty in the instrument would only be made perfect or complete upon the payment of the whole amount of the purchase-money.

135 Third. Answered in second interrogatory-in-chief. In further explanation I will state that, during the latter part of March or first of April, 1860, H. M. Hood, s'r, visited me at my house where I now reside, and proposed to pay me with some surplus funds he had in New Orleans, a part of the last nine thousand dollars' note, (the other nine thousand dollars' note having been previously negotiated by me with a relaction of a partial interest in the same to James M. Wright, who had also negotiated it to a bank at Fayetteville, N. C.) I acceeded to Hood's proposition, and received from him a draft on his merchants, Cumming & Co., in New Orleans, for the amount he proposed paying them, taking his note for the balance of $5,015, payable on the first day of April, 1862, as stipulated in the original note. This giving of a draft for a portion of the note in advance, and taking another note, was simply a matter of convenience suggested by the nature of the transaction, & not intended, in any manner, or to any extent whatever, to impair or effected the lien retained by the terms of the instrument to secure the payment of the whole amount of the purchase-money. It was expressly so stated and understood, without question, between us at the time.

Fourth. I transferred the whole note, during the autumn of 1862, to Z. Bartlett, by simply writing my name on the back of it. I considered myself then, & do still, perfectly solvent. The note was never protested; the state of war, then existing, prevented any further pro-
136 ceedings in the premises. I have never been called upon to pay the note, nor sued, or even cited, in any manner, with reference to the note, before this. I have already ans'd to 5th interrogatory, that the note was traded to Z. Bartlett, with the statement from me that it was secured by a vendor's lien on the land sold to H. M. Hood, s'r; will further state that I believed at the time that Mr. Bartlett had special

reference to that fact in the transaction, and that he felt that the note of H. M. Hood, sen., to secure the remainder of the last payment for the land, with the right of the vendor's lien upon said land, was safer for him (Bartlett) than the cotton, then liable at any moment to impressment.

Fifth. I know nothing of the purchase of the land I had sold to Hood by Mess. Hanna & Scogin until some months after it had occurred. I lived then where I now do, as before stated; Z. Bartlett, within three or four miles of the town of Marlin. The land, as stated, is situated contiguous to the 640-acre town tract upon which Marlin is situated. I had no conversation, nor do I know that Mr. Bartlett had, with either Mr. Scogin or Hanna prior to their purchase of land. I do not know when they came into possession of the land, nor anything as to the improvements they have made, except some additions of cleared land—how much I do not know, nor have I heard it stated. I do not know who is now in possession of the land, having heard of several sales of different portions of these tracts by both Scogin and
137 Hanna. Do not know what it was worth in coin at the time of their purchase. In confederate notes I considered it worth a great deal more than the am't mentioned in Hood's deed to them, with a consideration of $45,000. Both Hanna & Scogin spoke to me, some time since—two or three years ago, perhaps—in reference to the terms of sale by me to Hood. I gave them such information as my recollection of the facts warranted. One of them, and perhaps both, stated that they had been informed by Mr. Hood that he had paid the whole amount of the purchase-money; in reply to which I gave them the information as nearly as I could, disclosed by my answers to these interrogatories. At the time he had not paid one-half of the amount of either of the nine-thousand-dollar notes.

Sixth. I was living in Falls Co. in 1863. The circulating medium of the county was confederate notes & some county scrip. I have stated, in answer to interrogatory 14th, that the depreciation of the confederate notes at that time was very great, & that I had paid but little attention to it. I never made myself any distinction between the different classes or issues of the confederate notes or bonds, believing the whole entirely worthless. I do not remember of any class or issue of confederate notes used at par in the purchase of cotton or any property after
138 the summer of 1862, except a few isolated cases, in which the parties were influenced more by hopes than the facts of the situation. I have no knowledge of the motives or considerations which influenced the different parties in the transaction, &, as before stated, never *never* knew anything of it until months afterwards.

B. G. SHIELDS.

139 *Answers of Zenas Bartlett.*

First. In answer to first interrogatory: I am personally acquainted with all the parties concerned in this cause, except Mary Hood and T. C. Hood. I have known P. De Cordova two years; B. G Shields fifteen years; J. S. Hanna, over ten years; H. M. Hood, sen., and H. M. Hood, jr., about ten years each, and L. G. Scogin about five or six years.

Second. I purchased a note from B. G. Shields, signed by H. M. Hood, senior, calling for $5,015, in the early part of 1863, but cannot give the exact date. In the second interrogatory propounded to B. G. Shields, will be found set forth a substantial copy.

Third. Nothing was ever paid me on the note. It was turned over to my assignee, P. De Cordova.

Fourth. Shields stated to me that it was given as a part payment for the plantation known as the Gen. Shields farm, near Marlin, and that it was the last payment on the place, and perfectly understood by Shields and myself, that said note was a vendor's lien on the said land. Shields told me that the note was secured by a vendor's lien on the said land. I relied upon this vendor's lien as security for the payment of the note $5,015, when I purchased it. Shields never stated to me
140 that the vendor's lien had been discharged. It was distinctly and positively affirmed that the vendor's lien was still binding on the land.

Fifth. I knew nothing of the contemplated land sale until it was completed.

Sixth. Hood made no statement to me that he had fully paid off and discharged the last incumbrance upon this land in question. Of cours' I never would have acquiesced in any such statement.

Seventh. The compound-interest notes of the so-called Confederate States of America were on a par with other confederate notes at the time, in business transactions. I knew of no buying or selling of confederate notes at Marlin during the year 1863. Public sentiment and the military authorities forced us to take confederate notes in payment of debts. Many people had no faith in such currency.

Eighth. I find upon examination of some old papers a memoranda of settlement between Shields and myself, & that the note in question of $5,015 was received by me from Shields in the fall of 1862. I know nothing further to the benefit of the parties at issue.

Z. BARTLETT.

141 *Answers of Zenas Bartlett to cross-interrogatories.*

First. The note in question was dated April 1, 1860; signed by H. M. Hood, sen., payable to the order of B. G. Shields, on or before April 1, 1862. No rate of interest mentioned in the body of said note. I purchased the note in the early part of 1863, but the precise date not remembered, & my memoranda misplaced. The consideration I first paid was one hundred and eight bales of cotton, & then debt due me by Shields.

Second. B. G. Shields endorsed the note simply. I wrote no words on the note in his absence. It was emphatically understood that the note was a vendor's lien on the land sold Hood near Marlin, and I was authorized to make such endorsement thereon. Shields stated that the original note was for nine thousand dollars, a part of which note was paid, and that the $5,015-note was given in lieu thereof; it being the residue of the last payment on the place sold Hood.

Third. I regarded Shields, H. M. Hood, senior, and H. M. Hood, jr., perfectly good up to the close of the war, & since I know but little of their pecuniary condition. At any time I think the amounts mentioned could have been made off either of them. Shields & myself resided
142 in Falls Co. during the late war. H. M. Hood, jr., resided during said period in McLenan Co. I never knew the residence of Scogin & H. M. Hood, sr., during said period. Hanna resided in Robertson County.

Fourth. At the time I purchased the note in question the lien was mentioned. I learned it from Mr. Shields. I do not recollect when I mentioned the matter to Scogin and Hanna.

Fifth. They took possession in Jan., '64, I think, but cannot state precisely. They have been in possession ever since. They have built

some fencing & other improvements on the place, but to what extent I cannot say.

Sixth. I was near Marlin on my farm, about three or four miles from Hanna & Scogin. Don't know where the trade was consum'ated. I notified Scogin after their purchase. I knew nothing of the land trade until its completion. Of course, I cannot state what they knew about said lien. I do not suppose they purchased in bad faith.

Seventh. Confederate notes, State treasury notes, and county scrip; the former so-called by the Confederate States; the second by the State of Texas, and the latter by Falls County. Confederate notes *was* the principal circulating medium—no gold. I knew of no one speculating in confederate notes. They were taken in business transactions,
but were not by any means at par with gold. The people often
143 took these notes because the' felt constrained to do so.

Eighth. They were styled compound-interest notes, and were on a par with other *with other* confederate notes in ordinary transactions. No one bought or sold them at Marlin during the year 1863. Public sentiment and military rule compelled us to take confederate notes in payment of debts. Many had no confidence in such a currency. It was not at par with coin. They were often received in payment of debts during 1863, but not in the purchase of property, except isolated cases.

Ninth. I suppose the land, in 1863, well worth $40 per acre in the currency we had, perhaps more; but in coin I do not know what it would have brought.

Tenth. In answer to this, I refer to my answer in second interrogatory. I know of nothing further beneficial to the parties in suit, except that I have just found an old memoranda of settlement between Shields and myself, which shows that the note for $5,015 mentioned was received by me, in the fall of 1862.

Z. BARTLETT.

144 *Answers of Samuel D. Barclay to the interrogatories in the case of P. De Cordova, assignee, vs. Hoods, Hanna, Scogin, &c.*

Inte'y 1st. In answer to this, I will state that I have known P. De Cordova about eleven years; L. G. Scogin about twelve years. The other parties, J. S. Hanna, T. C. Hood, and Mary Hood, I do not know personally.

Second. I was county clerk of Falls County for the years 1859 and a part of 1860. The deed mentioned from B. G. Shields & E. A. Shields to H. M. Hood was recorded between the 9th and 20th March, 1859, in book D, on pages 356 and 357, in the records of Falls County, a correct copy of which is hereto annexed. I was at that time county clerk of Falls County, & had the recording of such instruments.

Third. I know nothing further concerning this cause at issue between the parties.

SAMUEL D. BARCLAY.

145 *Copy of deed from Shields to Hood.*

STATE OF TEXAS, *County of Falls:*

Know all men by these presents that I, B. G. Shields, of the State and county aforesaid, have bargained and sold, & do by these presents *do* bargain and sell, to H. M. Hood, of the county of Harrison, State aforesaid, the tract of land where I now reside, comprising eighteen hundred acres, for the sum of twenty-seven thousand dollars, to be paid

to me by said Hood in instalments, as follows: $4,000 on the 10th day of May next, in the city of New Orleans, for which the said Hood has given me a draft on B. C. Cummings & Co., in said city, payable at that time; five thousand dollars on the 1st day of January next, for which he has likewise given me a draft on the same house, payable there; nine thousand dollars on the first day of January, 1861, with interest at the rate of eight per cent. per annum from the first day of January, 1860, for which he has executed to me his promissory note, negotiable and payable at the Union Bank in the city of New Orleans, at the time mentioned; and nine thousand dollars on the first day of April, eighteen hundred and sixty-two, with the same rate of interest from the
146 same time, 1st January, 1860, and negotiable and payable at the same bank in New Orleans. The tract herein sold consisting of two bodies, one of eleven hundred and the other seven hundred acres, which *is* contiguous to each other for such extent and so situated as to constitute one tract, in convenient form. The boundaries of the eleven-hundred-acre tract are as follows: Beginning at the southwest corner of the four hundred acres heretofore sold and deeded to G. E. Franks, out of the lower fifteen hundred acres deeded to me by T. J. Chambers on the 13th September, 1851; thence by a line south 45 degrees west, to the river; thence down the meanderings of the river two thousand eight hundred and twenty varas, to a corner; thence north 40° east, to the southeast corner of tract sold to G. E. Franks as aforesaid; thence along southern boundary of said tract to the place of beginning, the length of line being near 1,435 varas. The boundaries of the seven hundred acres are as follows: Beginning at a stake designated as the southwest corner of a tract of 640 acres, surveyed for the town of Marlin; thence by a line south 45° west, to north line of said upper fifteen hundred acres, the distance being near seventeen hundred two and a ½ varas; thence north 45° east, to the northeast corner of
147 said fifteen hundred acres; thence south 45° east, to the place of beginning. These two tracts, comprising eighteen hundred acres, I sell and convey by this deed to H. M. Hood for the consideration aforementioned, together with all and singular the *rites*, hereditaments, and appurtenances to the same belonging or in anywise appertaining:

To have and to hold all and singular the premises aforesaid unto the said Hood, his heirs and forever; and upon the completion of the payments aforementioned, I do bind myself, my executors, and administrators to warrant and defend the said premises to the said Hood, his heirs & assigns, against all persons lawfully claiming the same or any part thereof; & I do bind myself to surrender possession of said premises the (1st day of January, 1860,) first day of January, eighteen hundred and sixty, reserving the right of cultivating & occupying the same exclusively until that date.

In witness whereof I hereunto affix my hand and seal, using scroll for seal, this 3rd day of Feb'y, 1859.

(Signed) B. G. SHIELDS. [SEAL.]
" E. A. SHIELDS. [SEAL.]

STATE OF TEXAS, *County of Falls:*

148 I, M. H. Curry, clerk of district court of said county of Falls, do hereby certify that the foregoing answers of B. G. Shields, Z. Bartlett, and S. D. Barclay, the witnesses before named, having been

reduced to writing by said witnesses, were sworn to and subscribed before me by the said witnesses respectively.

Witness my hand and official seal of office, in Marlin, this the 16th day , A. D. 1870.

M. H. CURRY, *D. C. F. C.*

149 *Interrogatories and cross-interrogatories to and the depositions of J. D. Oltorf, D. G. Adams, L. G. Scogin, and J. S. Hanna.—Evidence for the defence, read in evidence Jan'y 23d*, 1871.

In U. S. circuit court, at Austin, Texas.

P. DE CORDOVA, ASSIGNEE, PL'FT, *vs.* T. C. HOOD, SCOGIN & HANNA, DEF'TS. } No. 36. Chancery.

Interrogatories to J. D. Oltorf, D. G. Adams, L. G. Scogin, and J. S. Hanna, of Falls County, Texas.

1st. This suit is brought to subject certain land in Falls County, containing 1,800 acres of land in said county, deeded by H. M. Hood, senior, on the 22nd day of May, 1863, to L. G. Scogin & J. S. Hanna, to the payment of note, in words and figures as follows:

"$5,015.] FALLS COUNTY, TEXAS, *April 1st*, 1860.

"On or before the 1st day of April, eighteen hundred and sixty-two, I promise to pay to the order of B. G. Shields, the sum of five thousand and fifteen dollars, for value received, payable at the Union Bank in New Orleans, La.

(Signed) "H. M. HOOD, SEN."

Please state where you resided from 1859 to 1866, and where do you now reside; and if you say in Falls County, state where, during the period asked about, if you happen to know. Where did the said Scogin & Hanna, the said H. M. Hood, senior, one B. G. Shields, one H. M. Hood, junior, and one Z. Bartlett reside, from 1859 to 1866, and your means of knowing?

150 2nd. State, if you happen to know, what was the standing as to solvency of all the persons named in the last interrogatory *as to solvency* from 1859 to 1866 and 1867; what amount of property did they own subject to execution, and all the facts on which you base your answer as to their pecuniary condition, and particularly state the facts as to the condition as to solvency of H. M. Hood, senior, and H. M. Hood, junior, and the said B. G. Shields. Answer the interrogatory fully and at length, giving dates, facts, and particulars. Also, state what, at the said date of the deed, from H. M. Hood, sen., to the said Scogin & Hanna of said land—what was its value per acre?

3rd. State any and all facts in your knowledge going to show what date, if at any date, the said Scogin & Hanna went into the possession of the land so purchased by them of the said H. M. Hood, senior. State how long they continued in possession of it, and who is now in possession of it, and what improvements, if any, have been put on said land by the said Scogin & Hanna, and what is the cost of said improvements. Answer as fully as you can.

4th. During the year 1863, and about the month of May of that

151 year, and shortly before and shortly after that date, state what species of money or currency, if there was any, was in circulation in Falls and the adjoining counties; and if you say confederate money or confederate treasury notes, state all the facts in your knowledge as to the extent of their circulation and use in the community as a circulating medium in carrying on the traffic of the country; and if you say they were generally used, state in what estimation they were generally held in the community about those dates as compared with specie. How & at what rate, if at all, were they received in the payment of old debts, (if they were used at all for that purpose,) and in the purchase of land and other property? If you say they were received by the community at par, or so received by any considerable portion of the community, state the facts fully on this point; and all facts, persons, dates, and particulars going to show the extent of their circulation, and the value put on them by the community generally. What, about those dates, if you know, was the value of that particular class of Confederate State' treasury notes, known as interest-bearing notes, and which bore interest at the rate of two per cent. per day? State all the
152 facts, instances, and circumstances going to show the value, at that date, of the class of confederate notes last referred to. And in this connection, state, if you know, in what currency, or class of currency, if any, did the said Scogin & Hanna pay for, if at all, *for* the land purchased by them of H. M. Hood, senior, and above referred to.

5th. State, if you happen to know, fully and distinctly, and at length, all the facts as to the trade and bargain between the said H. M. Hood, senior, and the said Scogin and Hanna for the land in question. When was the trade made; at whose instance; who proposed or suggested the mode of payment? State the mode of payment, and state all the particulars of each and all the payments fully, giving dates and amounts, and particularly state all the facts going to show that the payment, if made, was the fair value of the land at that date, or the contrary. Give all the facts on this point, favorable and unfavorable to both parties. Answer fully.

6th. State, if you happen to know, from whom and at what date did the said H. M. Hood, senior, purchase this land; and if you say he purchased from one B. G. Shields about the 5th day of Feb'y, 1859, state, if you know, what, at that date, was the general belief in
153 the community as to the solvency of H. M. Hood, senior, & H. M. Hood, junior, and the facts on which you base your belief? State, if you know, all or any of the facts as to the payments made, if any were made, by the said H. M. Hood, sen., to the said Shields for said land, and particularly as to the payment by H. M. Hood, senior, of a certain note for $9,000, dated on 26th Feb'y of 1859, and payable to B. G. Shields, or order, on the 1st day of April, 1862, and signed by H. M. Hood, senior, and H. M. Hood, junior. State fully and particularly, giving dates and amounts, and all the facts as to said note, and what has become of it. Be clear, full, and distinct on this point, and in every instance indicating the sources of your information, and if you ever heard H. M. Hood, senior, B. G. Shields, or Z. Bartlett, make any statements as to the payment or settlement of said note for $9,000 or as to the payments made by H. M. Hood, senior, on said land. State fully all the facts, and all the declarations of each, when made, how made, who was present, and under what circumstances.

7th. State at what date and at what time did each of you first become aware of the existence of the note for $5,015, inquired about and set forth in the first interrogatory; and state fully all the facts in your

154 knowledge as to its execution, how it came to be given, and when and at what date was it negotiated, if at all, by the said Shields to the said Bartlett, or any one else; and state any and all the facts in your knowledge going to show that at the date of the purchase of the land in controversy by the def'ts Scogin & Hanna, of the said H. M. Hood, senior, that they knew or had reason to know of the existance of said note or the contrary; and in this connection state if you know at what date did the said def'ts Scogin & Hanna, first know, or had reason to know, of the execution of this note. Be full and particular on this point, giving all the facts, and also in this connection state if you happen to know where was the said Z. Bartlett and the said Shields at the date of the said purchase made by said Scogin & Hanna, and how far were they from the place when the said title was made.

8th. State any other facts bearing in this suit that will be pertinent to the case, and will benefit either party to the suit.

HANCOCK & WEST,
Att'ys for Def'ts & Solicitor, &c.

The above inter'ys & X to be taken without commission by
155 any officer authorized to take depositions, as per agreement on file.

HANCOCK & WEST,
Att'ys for Scogin & Hanna.

APRIL 9, 1870.

156 In U. S. circuit court, west. dist. Tex., at Austin.

P. DE CORDOVA, ASSIGNEE, *vs.* T. C. HOOD ET AL. } Chancery. No. 36.

Cross-interrogatories to J. D. Oltorf, D. G. Adams, L. G. Scogin, & J. S. Hanna, witnesses examined by the defendants.

Ans.—

1. What interest have you, if any, in the result of this suit? If any of you are parties thereto, then say what to you will be the result in the event the pl'ff should recover.

2. Please, each of you, state particularly what part of the time between the years 1859 & 1866 you resided in the county of Falls, & what part of such time you were actually in said county. Where were you during the war? Were you or not in the army? If yes, state what years you were so in the army, & what part of such years you were actually in the county of Falls? If not in the army, then state what part of the years named you spent within the county of Falls, & state what you were doing, what business you were following, while so in the county of Falls during those years mentioned.

157 3. If you say that either or any or all of the parties named in the 1st direct interrogatory were regarded as solvent, or if you state as a fact that they were solvent in the years from 1859 to 1866 & 1867, you will please give the means of your information, and be kind enough to state in what their property consisted, and what effect the result of the war had upon each of the parties named, pecuniarily. Were they solvent after the close or at the close of the war? Were the parties named solvent when emancipation of the slaves took place?

4. At what time did H. M. Hood, sen., die? Give the date. State

if you know, what, if any, property the said Hood left, situate in the county of Falls, when he died. When he removed from Falls what property did he take with him? Please be careful and explicit in your answers, and be kind enough to answer the same question in regard to H. M. Hood, jr.

5. If you say in answer to 3rd direct interrogatory that Scogin & Hanna, or either of them, took possession of the land mentioned in the direct interrogatory, then state if you know the very date on
158 which they, or either of them, took actual possession thereof? When did they go on the place? What use did they then make of the place? Did they cultivate it? If not, what did they do?

6. If you, in answer to the 4th direct interrogatory, state that you know what was the value of confederate money, please say what it was worth at the time Scogin and Hanna claimed to have purchased the land from H. M. Hood, sen., that is mentioned in the direct interrogatory? What could confederate money then be sold for in Falls County for gold? In the sale of lands how was it rated? Was it at par with gold and silver? Did the community—the people of Falls County—receive it at par with gold and silver? Name some of the persons who received it at par about the time mentioned, in exchange for gold or silver, for lands or for negro slaves? If you name any such person or persons, then say if it is not true that such person or persons were not exceptions to the general rule? Do you not know that confederate money was not at par with gold and silver, in any view of the case, in the sale or purchase of property at the time mentioned? State
159 what was the value, in gold and silver, of the Hood place when it was bought by Scogin and Hanna? What was the price given therefor by them, and in what was it paid? Do you or not know anything of an order (military) issued by the military authorities, then (spring or summer of 1862) having power in Texas, requiring that parties should receive confederate money in Texas, in the payment of debts? Do you know anything of such order, or of any order of like import or purport? If yes, state whether or not it had any influence in causing creditors to receive confederate money for debts? Be kind enough to state the difference in value in gold & silver of the ordinary confederate money, & the interest (2% a day) bearing notes? Be careful to answer fully, and to give your means of information. If you can, give the particulars of one or more transactions embracing the matter here enquired about?

7. Please answer the 5th direct interrogatory very fully. If you have not done so, so answer now, & state clearly & distinctly each fact sought by s'd interrogatory. Do you not know that there were other persons ready & willing to give a large sum for said place (Hood place) in excess of the sum given by Scogin & Hanna? Do you not
160 know that said place was worth a much larger sum in confederate money, at the time it was bought by Scogin & Hanna, than they gave for it?

8. Do you know what Hood, s'r, contracted to give B. G. Shields for the said place or places he (Hood) afterwards sold to Scogin & Hanna? If yes, state it, & state also how, when, & where you got your information.

9. Did you ever see the instrument of writing from B. G. Shields, or s'd Shields & his wife, to H. M. Hood, s'r, conveying or contracting to to convey said premises to said Hood? If yes, when & where did you ever see it? If you never saw the original, state if you ever saw a copy of it? If yes, when & where? Did you ever see the record of said

instrument as recorded in Falls County? If yes, state when & where. Did you examine the title of said Hood to said premises before the purchase thereof by the said Scogin & Hanna, or cause it to be examined? If so, when, & who examined it? Please be full, explicit, & positive in your answers to this interrogatory? Will you be kind enough to examine the record—county records—in Falls County, and then state if there is of record there any more than one instrument from Shields, or Shields & his wife, to said Hood in regard to
161 the premises or land mentioned in the direct interrogatories? Please procure and attach to your answers, a copy of each & every paper of writing in regard to said lands, or between the said Shields, or s'd Shields & his wife, and the said H. M. Hood, and mark them—mentioning the mark so the copies so attached may be identified.

10. Do you not know that the $5,015-note, sued on, is the representative of part of one of the $9,000 notes mentioned in the recorded instrument from Shields, or Shields & wife, to H. M. Hood, s'r? Through what changes, if any, did the said $9,000 go, before it resulted in the note sued on? How was the $9,000-note taken up? What was given in lieu of it or part of it? How was the thing, paper, note, draft, or obligation given in lieu of the $9,000-note, or part of it taken up? Please be careful and answer fully. If you state, in answer to any part of the 6th interrogatory, that you ever heard H. M. Hood, s'r, B. G. Shields, or Z. Bartlett make any statement in regard or as to the payment or settlement of said $9,000-note inquired about in said 6th interrogatory, be very careful to state all that was said at the time; what brought about the conversation; who introduced it, & why was it introduced; & what was the subject under discussion at the time; who sought the con-
162 versation; was anything then said about the character of the instrument by Shields, or Shields & wife, to the said Hood? Please leave nothing unsaid that was said at that time in regard to the payment of the purchase-money for said premises?

11. Please state if you know whether or not there were not a balance or balances due on other notes besides the one inquired about in the 6th interrogatory, which evidenced the purchase-money for said premises from Hood to Shields? If yes, state what, if anything, was said about such balances if there were any such. Who paid such balances if they have ever been paid? How & when, & to whom were they paid? State whether or not E. J. Gurley of Waco ever collected any of the purchase-money as due on the notes, one or more, from Hood to Shields? If yes, who paid, and how was it paid? Please be careful and answer fully.

12. If you have, in answer to the 7th interrogatory, stated when you first became aware of the existence of said notes for $5,015, please state further the circumstances under which you gained your knowledge; and be kind enough to state when you first became
163 aware of the fact that Hood had not paid all the purchase-money due the said Shields; whether it consisted in a knowledge of the existance of the said 5,015$ note or independent of it? State if you did not have good reason to know that there was a part, at least, of the said purchase-money on the sale from Shields to Hood unpaid, when the said Scogin and Hanna made the purchase from Hood? Had the records of deeds in Falls Co. been examined at the time? Did not the said Scogin & Hanna, or the one or the other of them, know that the instrument recorded made known the facts that the sale was on credit, and that a deed would not be made with warranty, &c., until the purchase-money was paid? If the records were not looked into, state the reason why. When

did you first see the record of the instrument from Shields, or Shields & wife, to Hood, sr.? When were you first informed that it was recorded? Who informed you, and state why & at whose instance the information was given? Who sought it? Why was it sought? If you did not know that this 5,015$ note was in existance until after Scogin & Hanna made their purchase from Hood, then state if you did not know
164 before that time that some, more or less, of the purchase-money from Hood to Shields had not been paid? Of whom did you enquire & when, in relation to whether or not the purchase-money due from Hood to Shields had been paid? Did you look to the record of deeds? If yes, what did it show? Did you enquire of Shields prior to the purchase by Scogin & Hanna? If yes, what did he say? Did you enquire of Shields after the purchase? If yes, what did he say? Be careful & state fully all the facts.

13 int. to Altorf. Were you or not a partner of W. B. Forde, esq., when this suit was brought?

CHANDLER & CARLETON, &
W. M. WALTON, *For Pl'ff.*

165 STATE OF TEXAS, *Washington County:*

Know all men by these presents that, I Henry M. Hood, of the State and county afore-written, do hereby make this my last will and testament in manner and form following, that is to say:

Item 1st. In the event of my death before all my just debts are paid, I desire all my property, both real and personal, to be kept together except what I have heretofore advanced to my children, and what is hereafter mentioned as an advancement to my son John William Hood, until all my said debts are paid.

Item 2nd. Having given to my sons Richard L. Hood, Henry M. Hood, and Theodore C. Hood, and my daughters, Sarah Stone and Susan E. Hearn, negro property to the value of three thousand seven hundred dollars, it is my desire for my son John W. Hood, if I do not give and advance to him negroes of like value previously, to have and receive from my estate, immediately after my death, negroes of the value of thirty-seven hundred dollars, and negroes to be valued at the valuation of like negroes in the year eighteen hundred and sixty.
166 It is also my desire for my daughter Martha E. Hood, and my granddaughter, Leonora D. Edwards, who are minors, to have an equal advancement in negro property before a division of my estate, at the valuation of like negroes in the year eighteen hundred and sixty, but not until my just debts are paid.

Item 3rd. It is my will that my wife, Mary M. Hood, in the event she should survive me, have a child's part of my negro property, and that she select such a part of my real estate as she may like best, as a residence during her natural life.

Item 4th. It is my desire that my wife, Mary M. Hood, at my death, have all my stock, farming-tools, household and kitchen furniture, or so much thereof as she may deem necessary for her use, and if any part of such stock, tools, and furniture is left and not taken and appropriated by my wife, I wish the same to be sold and the proceeds thereof to be divided equally among my children and granddaughter above named, except Henry M. Hood.

Item 5th. It is my will and desire that, after all my just debts
167 are paid, my children and granddaughter above named, and my wife, Mary M. Hood, (except Henry M. Hood,) are made equal in negro property, then the remainder of my negroes to be equally

divided, share and share alike, among them, except Henry M. Hood, who I do not desire shall have any further share in my estate, beyond what I gave him in Harrison County, Texas.

Item 6th. It is my wish that after my wife, Mary M. Hood, select such portion of my real estate as she may desire for her residence during her natural life, for the remainder of said real estate to be equally divided amongst my children and granddaughter above named, except Henry M. Hood.

Item 7th. It is my will that all the property both real and personal given and bequeathed to my wife, Mary M. Hood, at her death, be equally divided among my children and granddaughters, except Henry M. Hood.

Item 8th. It is my wish and desire that all the ready money and notes that I have at my death, after paying my debts, be equally divided
168 among my said children, granddaughter, and my wife, Mary M. Hood, except Henry M. Hood, and my railroad stock, if not previously disposed of, be sold and the purchase-money equally divided among my children and granddaughter, except Henry M. Hood.

Item 9th. Having heretofore given my grandson, William Motley, as much of my estate as I design for him, it is my will that he have no farther interest or share whatsoever in said estate or the division of the same.

Item 10th. It is my will and desire that if any of the heirs and distributers of my estate above named die without legal issue surviving, then his or her share of said estate is to revert back to such of my children and granddaughters above named or their issue as may be living at the time, and be held by them as if such decendant had never lived.

Item 11th. It is my will and pleasure for the county court pertaining to estates to take no other action or control over my estate then to probate this my last will and testament and record an inventory of the same, and that my executors hereafter named be qual-
169 ified without additional security on their bonds, and that they be allowed the usual fees for their administration.

Item 12th. I do hereby appoint my wife, Mary M. Hood, my son-in-law, A. B. Stone, and my son, T. C. Hood, my executors of this my last will and testament, hereby revoking all other former wills and testaments by me at any time made, and I do also hereby request my wife, Mary M. Hood, to take charge of, educate, and bring up our granddaughter in the way she may judge best for her interest. In testimony whereof I have hereunto set my hand and affixed my scroll for seal this the 10th April, A. D. 1864.

H. M. HOOD, SEN. [SEAL.]

Test:
JNO. H. WEBB.
F. G. BROWN.
JOHN H. STONE.

Codicil.

On review my will of this date, I will and desire that that parts which directs all my real and personal estate to be kept together, as stated in item first, and for the object therein set forth, be so changed as to allow my executors to sell at discretion my real estate in Harrison
170 County and also in McClellan County, and appropriate the money arising from such sale to the payment of my just debts, and, if any-

thing over, to be distributed among my legatees as recognized in my will, according to the wording and intent thereof. In testimony whereof I have hereunto set my hand and affixed my scroll for seal, this the 10th April, A. D. 1864.

H. M. HOOD, SEN. [SEAL.]

JOHN H. WEBB.
F. G. BROWN.
JOHN H. STONE.

THE STATE OF TEXAS, *Washington County:*

I, John Welch, clerk of the county court of said county, certify that the above and foregoing is a true and correct copy of the will and codicil of H. M. Hood, deceased, now on file and duly probated & recorded in my office.

Witness my hand and the seal of said office affixed, at office in Brenham, 7th June, A. D. .

JNO. WELCH, *Clerk C. C. W. Co.*

171 DE CORDOVA, ASSIGNEE, *vs.* HOOD ET AL. } 36.

Answers of J. D. Oltorf to direct & cross-interrogatories propounded to him in the above-entitled cause.

Inte'y 1st. I resided in Falls County, Texas, where I now reside. B. G. Shields & Z. Bartlett resided also in Falls County. J. S. Hanna resided in Robertson County. H. M. Hood, senior, was sometimes in Falls County on his plantation, but I think his residence was in Louisiana. Don't know where H. M. Hood, j'r, resided. L. G. Scogin, when I first became acquainted with him, which was at the time he purchased the land of Hood, in connection with Hanna, resided in Robertson County. He afterwards became a resident of Falls County where he now resides. I do not remember the date of the beginning of his citizenship in Falls County.

Inte'y 2nd. I can answer only as to Bartlett & Shields. As to solvency, they were both regarded perfectly solvent. From 1859 to the close of the war, General Shields owned a large & valuable tract of land on the west side of the Brazos River, in this county, outside of the homestead,
172 that was liable to execution, besides horses & cattle to the value, I suppose, altogether, of at least ten thousand dollars. Don't know what his pecuniary condition at this time. Bartlett is now bankrupt. H. M Hood was generally thought to be wealthy. The value of the land, at the date of the sale from Hood to Scogin & Hanna, I thought was worth a little more than they gave for it, but prices of lands & other property was at that time fluctuating and uncertain.

Inte'y 3rd. I can't state the time Scogin & Hanna went into possession of the land. Scogin is now in possession of the land, & has been since he first took possession. Considerable & valuable improvements have been made upon the land since the purchase & possession by Hanna & Scogin; a good deal of land has been cleared & put in cultivation, many houses have been built upon various parts of the tract; in fact, there are now four different farms upon said land, with the necessary buildings for laborers upon each. I would say that the improvements made upon the land by Hanna & Scogin are worth twelve or fifteen thousand dollars.

Inte'y 4th. About the time mentioned, confederate money, or Con-

173 federate States treasury notes, was the only circulating medium in this portion of the State, and was used almost entirely in the trade of the country. I can't state how it was estimated as compared with specie, as there was not specie enough in the country, in circulation, to have made an exchange. It was received at par in payment of debts; I so received it, and so paid it to others. I can answer no further this interrogatory.

Inte'y 5. I know nothing of the facts as to the trade, only the parties came to my office, stated they had made the trade, & desired me to write the deed, first requesting me to examine the records of the county to see if Hood had a title to the land from Shields, which I did—reported that he had. I saw the money paid for the land by Scogin & Hanna. It was confederate money, but I don't remember what issue of money.

Inte'y 6th. He purchased the land of B. G. Shields about the date mentioned, Feb. 5th, 1859. Hood was regarded at that time as not only solvent, but possessed of great wealth. Hood, j'r, was also spoken of as a man of considerable property. Hood, s'r, brought a large number of slaves here, to cultivate the place, together with horses,
174 mules, farming implements, &c., and employed an overseer, and put him in charge of the premises. I know nothing as to the payments made by Hood & Shields.

Inte'y 7th. Shortly before the institution of the suit now pending I was informed by L. G. Scogin, I believe, that such a note, or at least, a note of about that amount, was in existance. I am perfectly satisfied that Hanna & Scogin did not know, at the time of the purchase of the land from Hood by them, that such a note, or any other, against the land was in existance; I did not know it, & I was living here all the while; I examined the records for them, & talked the whole transaction over with them, and if they had known that any claims for said land were unpaid, I know they would have spoken of the matter, & had an arrangement made, satisfactory, before closing the trade. Z. Bartlett was in the town of Marlin, county of Falls, State of Texas, and B. G. Shields in said county & State about eleven miles away from Marlin, at the date of the purchase by Hanna & Scogin. The deed was written by me in the town of Marlin.

Cross-interrogatories:

Inte'y 1st. I have none; am not a party thereto.

175 Inte'y 2. I resided in Falls County the entire time between the dates mentioned, & was actually in the county all the time except, perhaps, an occasional absence on business. I was here during the war. Was not in the army. I was engaged principally in the practice of law.

Inte'y 3. The property of B. G. Shields consisted of lands, negroes, cattle, horses, hogs, &, I think, a lot of jackasses. Z. Bartlett had also lands, horses, hogs, & town lots, improved & unimproved, and a stock of merchandize. I got my information from personal observation, & from business transactions with said persons, & being close neighbor to them had every opportunity of knowing what their pecuniary condition was. The result of the war was the loss of their negro property, & the bankruptcy of Z. Bartlett. I don't know anything now as to the solvency of B. G. Shields, as he has been engaged since the war largely in the mercantile business, and it is almost impossible to learn much of the solvency of merchants. Report say' that he is greatly in debt. My impression is that he was solvent at the close of the war, & when emancipation took place.

176 Inte'y 4. I don't know the time of his death. He left no prop-

erty in Falls County to my knowledge. Don't know what property he took with him when he left this county. I do not know that H. M. Hood, jr., ever took any property from this county, or ever had any in it. Don't know when he died.

Inte'y 5. I do not know the date precisely of their possession of said land. They have been using the place for farming purposes. Scogin & his family have resided upon it the greater part of the time, & has been cultivating it.

Inte'y 6. This int. is very lengthy, & I don't think I can answer much of it. I don't think that, at the time Hanna & Scogin purchased the land, *that* a sale of confederate money for gold could have been made in Falls County. There was no gold then here in circulation, or so little that no such sale could have been consum'ated. In land sales the prices, as before stated, were fluctuating. Some persons were willing to receive a very small sum for property, while others were rating theirs very high. All that was sold, however, was for confederate money.

177 With some persons it was at par, and with others it was not. I believe all received it in payment of old debts at par. I can't now mention the names of any persons who received it at par for lands, for gold or silver, or for negro slaves. Negro slaves were then regarded as a little doubtful, & very few selling. No gold or silver was in the country, and, at the present time, I can't think of a land-trade made in the county save the Hood sale to Hanna & Scogin, and a little tract of forty acres sold by R. W. Scott to George Arnold, & I do not know how or at what rate confederate money was taken in pay for said tract. I presume gold & silver was, or would have been, worth more than confederate money had there been any in the country. I can't state the value of the Hood place in gold or silver, or confederate money either, at the time of the sale. They paid cash for it, at the rate of twenty-five dollars per acre. It was paid in confederate money. I knew that such a military order was issued; perhaps saw the order, but don't think it ever had much influence here either one way or the other. I can't state the difference now between the different issues of confederate money as to the value.

Inte'y 7. I do not know of any persons who were ready or willing to

178 give for said place a larger sum than the said Hanna & Scogin gave, though there may have been. I have stated that I thought the place was worth a little more than they paid for it.

Inte'y 8. I do not know what he was to give.

Inte'y 9. I have seen the deed from B. G. Shields & wife to Hood, or rather have seen a copy of said deed upon record in the county records, but never saw the original. I first saw it when Scogin & Hanna made the purchase of the land from Hood, & next saw it on last Monday. I never saw any other than the one on record; saw that in the office the county clerk of Falls County. I did not examine the deed very closely at the time; read it over, & found it to be a deed conveying the land to Hood. This examination took place before the sale was consum'ated between the parties. I have examined the records, and can find no other instrument of writing there in regard to the sale between Shields & Hood, or Shields & wife.

Inte'y 10. I know nothing as to this interrogatory, except that a certain $9,000.00 *dollar* note was placed in the hands of Oltorf & Forde by Scogin & Hanna for collection, signed by H. M. Hood, sr., and H. M.

179 Hood, jr., dated Feb'y 25th, 1859, payable on or before the 1st day of April, 1861, payable to the order of B. G. Shields, negotiable and payable at the Union Bank of New Orleans, La., with a

credit endorsed thereon for forty-two hundred and ninety-five $\frac{98}{100}$, which they paid E. J. Gurley for, and took it up, as they informed us.

Inte'y 11. I do not know if there were any balances due on other notes or any notes, the purchase-money of said land. I can answer nothing more in regard to the payment of Gurley than what I have stated in my previous answer.

Inte'y 12. I believe that I have already answered most of this interrogatory. I never had any reason to know or believe that a part of the purchase-money on the sale from Shields to Hood was unpaid at the time Scogin & Hanna made their purchase. I presume I informed Scogin & Hanna what the contents of the instrument *was*, but don't now remember. I never knew it was recorded until I examined, at the request of Hanna & Scogin. The information was sought by them, I suppose, so that they might know before closing the trade with Hood,
that he had a title to the land and could make them a title. The
180 record shows a deed from Shields & wife to Hood, sr. It shows
that notes were executed and drafts given in payment of the land, &c. I can answer nothing further as to this interrogatory.

Inte'y 13. I was and am now a partner of W. B. Forde.

J. D. OLTORF.

181 *Answers of L. G. Scogin to direct & cross-interrogatories propounded to him in the above-entitled cause.*

Inte'y 1st. To the first interrogatory he says: I resided in Cad'o Parish, La., from 1859 to 1862; from the spring of 1862 to the spring of 1864, I resided in Robertson Co., and from 1864 up to the present time, I have resided in Falls Co., Texas. I first became acquainted with J. S. Hanna in the year 1862, in Robertson Co., Texas, and have known him intimately ever since. I knew H. M. Hood, senior, from character, in the State of La., & became acquainted with him in the year 1863, in Falls County. I have known General B. G. Shields from 1863, personally, up to the present time, and H. M. Hood, junior, I have never known, only from character. I have known Z. Bartlett, intimately, from 1864 up to the present time.

Int'y 2. He says: J. S. Hanna has been considered solvent ever since I knew him; his property consisting of land, stock, & negroes. The am't subject to execution, I am not able to say. H. M. Hood, senior, was reputed one of the wealthiest men in Cad'o Parish, La., & was regarded as such in Falls Co., Texas, his property consisting of lands,
negroes, stock, & money. The amount subject to execution, I am
182 unable to state. As regards B. G. Shields, I cannot state anything relative to his pecuniary standing, only from hearsay. He had land, negroes, & stock. The am't of his property subject to execution, I am not able to say; and as regards myself, I have been solvent all the time. As regards H. M. Hood, junior, I cannot say; as regards Z. Bartlett's property, I am not able to state the amount subject to execution, but he has always seemed to have plenty of everything. As regards the land purchased of H. M. Hood, senior, the value of which I regarded as being worth from 20 to 25 dollars per acre.

Inte'y 3. He says: My wife, Anna E. Scogin, took possession of said land some time in December, 1863. I have been in possession, myself & others, from that date up to the present time. The improvements consists of about eight hundred acres, in a state of good cultivation; the cost of which would be from ten to twelve dollars per acre. I have built a

good gin-house & screw, worth about twelve hundred dollars, with some 20 or 25 cabbins, worth from 75 to 175 dollars each.

Inte'y 4. He says: As regards the currency in circulation from 1863 to 1864, in Falls & adjoining counties, I knew of no other kind of
183 money in circulation but confederate money, interest-bearing notes and bonds, which were used exclusively by all business men, so far as I knew; and the people were glad to get it, as there were no specie in the country. In the payment of debts & purchase of lands and other property, confederate money was the circulating medium & was received at par in the payment of debts. We, J. S. Hanna & myself, paid H. M. Hood, senior, for the land bought of him, in Confederate States treasure notes, bearing interest at the rate of two per cent. per day. He would have no other, as he wanted the interest on said notes; and remarked, it was just the kind of money he wanted.

Inte'y 5th. He says: The land in question was bought of Hood the 22nd day of May, 1863—he proposing to take for his land twenty-five dollars per acre in interest-bearing notes at two per cent. per day, cash in hand. We considered the price paid on the land all it was worth, as the interest on said notes was a considerable item. The trade was made in Falls Co.

Inte'y 6. He says: The land was bought by Hood from one B. G. Shields, for twenty-seven thousand dollars, as that is the amount he told me he had paid for it. I do not know *of* anything of the date of said trade; I only know from Hood's own lips that every
184 dollar was paid on the land in question. I have never heard any of the parties referred to say anything about the 9,000 dollar note here spoken of. I was notified by E. J. Gurley, of Waco, that he had in his possession a note given by H. M. Hood, sr., & H. M. Hood, jr., for nine thousand dollars, which he claimed said note to hold a vendor's lien on the land, with a credit on said note between 4 & 5 thousand dollars; the exact am't of the credit, I do not remember at this time. J. S. Hanna & myself went to Waco to see Gurley in regard to said note, and, on investigating the matter, we came to the conclusion, that there was no getting around the payment of said note; consequently we paid Gurley & took up said note. The note is now in the hands of Sale & Bassett, in Brenham. I have answered all I know to this interrogatory.

Inte'y 7th. He says: As regards the five-thousand-fifteen-dollar note in question, I never heard of it until the year of 1867 or the spring of 1868; the exact date I do not remember. My attention was called to this note by Z. Bartlett, in his store. He opened a letter which I did read, but he told me it was from his lawyer, about this five-thousand-fifteen-dollar note, and he wanted me to go with him to the court-
185 house and examine the deed from Shields to Hood and see if such a note was described in the deed. We went to the court-house & examined the record of said deed & could not find any such note mentioned. I then asked him more fully about it, as I felt some anxiety about it. He referred me to General Shields for particulars. In a few days I met General Shields in Marlin. He told me that it was a note that he had traded to Bartlett for collection, and not to give myself any uneasiness about it for it would never bother me. Mr. Bartlett also told me it was a note he had gotten of B. G. Shields & had put it in the hands of Churchill Jones, his father-in-law, as gold, as Hood was reputed one of the wealthiest men in the State, and that he would have that much to fall back on after the war. I also notified J. S. Hanna of said note, & what I had seen & heard. This is about the sum

& substance of my first intimation of the existence of the five-thousand-&-fifteen-dollar note. On the day that J. S. Hanna & myself closed the trade with the said Hood, senior, the said Z. Bartlett was in Marlin, where the title was made. I do not know where B. G. Shields was. I presume he was at home, or in the county. The said Bart-
186 lett was well acquainted with the trade, as he was at my house frequently & did not live more than one mile & a half from me.

Inter'y 8. He says: I know of no other facts in regard to this matter.

L. G. SCOGIN.

187 *Answers of the witness L. G. Scogin to the cross-interrogatories propounded to him.*

X-inte'y 1st. To the first interrogatory he says: If the pl'ft should recover the suit the result will be the payment of an unjust debt.

X-inte'y 2nd. He says: I moved to Falls County in June, 1864, that is, after my return from the army, and have remained here ever since. I have stated that I was in the army. My business was farming.

X-inte'y 3rd. He says: As to myself I have always been solvent. My principal loss from the result of the war was my negroes. As regards J. S. Hanna I have always considered him, since I have known him, to be solvent; his property consisting in land, negroes, & stock; his principal loss was negroes, so far as I know. As regards H. M. Hood & B. G. Shields I have answered in direct interrogatory. I presume their principal loss was negroes.

X-inte'y 4. He says: I do not remember the date of the death of H. M. Hood. I know of no property left by H. M. Hood, s'r, in Falls County. I was present when he moved from this county. He took
188 with him his negroes and stock. He left at that time, at my gin, 175 or '80 bales of cotton, that I do not know what he did with *it*. As to H. M. Hood, j'r, I cannot say anything, as I was not acquainted.

X-inte'y 5. He says: I do not remember the exact date my wife took possession, but it was in the month of December, 1863. I have used it as a means of support in the way of farming.

X-inte'y 6. He says: As regards confederate money I have answered in direct interrogatory. I knew of no sales of confederate money for gold as there was no gold in the country. In the sales of land and other property it was taken dollar for dollar. I received it for a large body of Brasos land at par, sold in Robertson County. H. M. Hood received it at par from J. S. Hanna & myself. I know of no general exceptions. I do not. The value of the Hood place was what we gave for it. I have stated the price & the money. I knew of such military order forcing any man to receive it or reject it. I knew of no difference in the confederate money except the interest on the notes.

Int'ry 7th. He says: I knew of no person that would have given the amount we gave for the land nor do I know that it was worth a
189 dime more, as the money paid was sought after in consequence of the interest.

X-int'ry 8. He says: Hood, s'r, told me what he gave B. G. Shields for the land, and I saw it on record, which was twenty-seven thousand dollars, which I have stated in direct interrogatory.

X-int'ry 9th. He says: I have seen the deed from Shields to Hood frequently, and got J. D. Oltorf, on the 22nd day of May, 1863, to examine said deed. I have never seen but one deed from Shields & wife to Hood.

X-int'ry 10th. He says: I do not know that the $5,015 *dollar* note

is any part of the 9,000-dollar note here mentioned. I have given all the facts that I know relative to said note in the 7th direct interrogatory.

X-int'ry 11th. He says: I know of no balances. I have stated in direct interrogatory that J. S. Hanna & myself took up a note that was in the hands of E. J. Gurley of Waco.

X-int'ry 12. He says: I do not know that any part of the purchase-money for said land was unpaid by said Hood, senior, as he told me & J. S. Hanna that there was not a dollar unpaid on said land. The record was looked into on the day of purchase by J. D. Oltorf. I
190 never heard of the 5,015-dollar note until the fall of 1867, or the spring 1868. I have stated all I know or remember in this suit, except a statement made to me by James B. Baiton, after I heard of this five-thousand-fifteen-dollar note. Mr. Baiton stated that J. E. Franks & himself were at Hood's a short time before J. S. Hanna & myself bought the place. Hood told them that he had made several hundred dollars that day by taking up his last note from Shields, given for the land in question.

L. G. SCOGIN.

191 DE CORDOVA, A'SIGNEE, *vs.* HOOD ET AL. } 36.

Suit pending in the U. S. circuit court western district of Texas, at Austin.

Answers and depositions of Ja's S. Hanna, L. G. Scogin, J. D. Olttorf, and D. G. Adams, to the accompanying interrogatories propounded to them in the above-entitled cause, taken before M. H. Curry, clerk of the district court of Falls County, Texas, without commission.

Inte'y 1st. Answers of the witness *of* J. S. Hanna. He says: I resided in Robertson County, and now reside there.

Inte'y 2nd. He says: I became acquainted with L. G. Scogin in Robertson County, in the spring of 1862, and have known him intimately ever since. He was perfectly solvent from the time I became acquainted with him until 1867; his property consisted in lands, negroes, & stock to the value of about forty thousand dollars. I became personally acquainted with H. M. Hood, senior, in May, 1863; knew him from reputation some time before. He was regarded as a wealthy man, &
192 entirely solvent. I do not know the amount of his property only from what he told me. He stated to me that he had a large amount of interest-bearing claims on the best men in Cad'o Parish, in La., amounting to some fifty or sixty thousand dollars; that he owned a valuable plantation in said parish, consisting of about sixteen hundred acres of land, and a tract of land near the city of Waco, in McLennan County, Texas, of considerable value. I cannot state the amount of his property not subject to execution. I was personally acquainted with H. M. Hood, junior, during his lifetime, but knew nothing as to his pecuniary condition. I knew General B. G. Shields soon after he came to Texas, about sixteen or seventeen years ago, and have known him since. I do not know what his solvency was from 1859 to 1867; I know that he had property consisting of valuable lands, negroes, & stock. I have visited his plantation, & have had several business transactions with him. Cannot state the amount of property he owned not subject to execution. I knew of Bartlett, in 1859, and have known

him up to the present time; he was engaged in the mercantile business, and farming, in Falls County, Texas. I am not sufficiently acquainted with his pecuniary matters to know the amount of property he owned not subject to execution.

193 Inte'y 3rd. He says: L. G. Scogin took possession of the land in December, 1863, by his wife, who moved upon the land, coming with her negroes & stock, L. G. Scogin himself being at that time in the army, and I was then acting as his legally authorized agent. The possession so taken was for L. G. Scogin and myself, and we have been in possession of the same ever since by ourselves & others who have held under or through us. J. W. Brooks, Morris & Perkins, & L. G. Scogin are now in possession & cultivating it. About eight hundred acres of said land have been cleared & put in a good state of cultivation since the purchase of the said land by the said Scogin & myself; also a gin-house & screw & fixtures, worth twelve hundred dollars in gold. Other improvements have been put upon the land, the value of which I am not now prepared to estimate. The clearing & putting in a state of cultivation the said land is worth at least twelve dollars per acre.

Int'y 4th. He says: About the date mentioned, confederate money was the circulating medium. It was generally & exclusively used at that time by the majority of the people. We had no specie circulation at that time. In payment of debts they were taken at par, and in the purchase of land and all other property. The two per cent. per day interest-bearing notes were sought after by business men generally,

194 & were regarded the best in circulation. I knew of several sales of valuable land that was sold for that class of money. L. G. Scogin sold a valuable tract of Brassos bottom-land for that class of money, lying in Robertson County, and the said Scogin & myself paid Hood, at the time we purchased the land of him as referred to, in two per cent. interest-bearing notes, as he would have no other.

Inte'y 5. He says: I was informed that H. M. Hood was offering the land for sale. I wrote to him at Waco that if he wished to make the sale of the land, to meet me on the land in Falls County, upon a certain day named. L. G. Scogin & myself met him at the time & place designated, and, after looking at the land, we closed the trade. Hood proposed the mode of payment, which was twenty five dollars per acre, in two per cent. confederate interest-bearing notes, cash in hand. We regarded it at that time the full value of the land. Mr. Hood remarked at the time that the interest-bearing notes & bonds of the Confederate States as good investment, & would do to sit down upon. He also stated at the time that he had paid up the purchase-money, & did not owe a dollar on the land.

Inte'y 6th: He says: I knew nothing as to the purchase of the land by Hood, sr., except what I had found from the records of the county, & what the said Hood told me. I did not know the Hoods at the time of the purchase of the land from Shields. Personally I know nothing of the

195 payment by Hood to Shields, except what Hood told me. That entire purchase-money had been paid in the latter part of the year 1868. We, L. G. Scogin & myself, were notified by letter from E. J. Gurley, of Waco, that he held a note originally for nine thousand dollars, given by Hood, senior, & Hood, junior, to B, G. Shields, for the purchase-money of said land, with a credit thereon of between four & five thousand dollars. On the investigation of the note we found or believed it to contain a vendor's lien upon the land in question, and therefore paid E. J. Gurley & took up the note. Said note is now in

possession of Sale & Bassett, at Brenham. I know nothing more than I have already stated.

Int'ry 7th. He says: I do not remember the exact time when I heard of said note but it was shortly before the institution of the suit now pending upon the same. I can state nothing further in answer to this interrogatory, except as to the whereabouts of Z. Bartlett & B. G. Shields at the date of the purchase made by Scogin & myself. Bartlett was in the town of Marlin, county of Falls, where the title was made, & was, to the best of my knowledge, *was* in the same house at the time the deed was being written. General B. G. Shields, I think, was at his residence about 12 miles from Marlin. I am sure was in the county.

Int'ry 8th. He says: I do not know that I can answer anything
196 further that would be of any benefit to either party.

Answers of J. S. Hanna to the cross-interrogatories propounded to him, L. G. Scogin, J. D. Oltorf, D. G. Adams.

Int'ry 1st. J. S. Hanna to the 1st interrogatory. He says: I am a party defendant to the suit & would have to pay one-half the note sued upon if recovered by the pl'ff.

Int'ry 2nd. He says: I never resided in Falls County and was only occasionally in Falls County. I was generally at home. Was not in the army. Was engaged in farming.

Int'ry 3rd. He says: I have said in answer to direct interrogatory that L. G. Scogin was solvent, and now state that he was solvent before and after the war, & is yet solvent. His property, as before stated, consisted in lands, negroes, & stock. His principal loss, from the result of the war, was his negro property. My means of information as to his pecuniary condition is the result of our intimate acquaintance, & from having acted as his agent during the time he was in the army, and from having many business transactions with him since. As to the solvency of the other parties, I refer to my answer in direct interrogatory, and can state nothing more as to their solvency, since the war, only from hearsay. As regards the solvency of myself, I was solvent from
197 the year 1859 to the year 1867, and my property consisted in lands, negroes, & stock, and promissory notes. My principal loss from the result of the war, was that of my negroes & claims against bankrupt creditors. I am still solvent.

Int'ry 4th. He says: I can answer nothing as to this interrogatory of my own personal knowledge.

Int'ry 5. He says: I do not know the exact date they took possession, but it was in the month of December, 1863, as stated in direct interrogatory. Mrs. Anna Scogin, wife of L. G. Scogin, moved upon the place & took possession thereof, for myself & her husband, by my direction as a partner & agent of L. G. Scogin. It has been used by L. G. Scogin as a homestead & cultivated by him & others under his direction.

Int'ry 6th. He says: I have stated in direct interrogatory that it was the currency of the country at that time, & was used exclusively in all business transactions. There were no gold transactions of that kind, or sales of confederate money for gold or silver, as there *were* none in circulation, to my knowledge, and I do not know what it could have been sold for, if at all. It was rated at par. I do not know, as there *were* no gold or silver in circulation. I do not know of any person exchanging gold or silver for confederate because, as stated before, there *were* none in the country. L. G. Scogin, Hood, s'r, & myself re-

198 ceived at par, for Brasos bottom-land about that time. They were not exceptions to the general rule. As stated before, there were no gold or silver in circulation & do not know that it was not at par. It was worth twenty or twenty five dollars per acre. We gave twenty-five dollars, per acre, cash, in two per cent. interest-bearing notes. I have heard of such a military order but never saw it. Don't know, as there was no gold or silver in circulation. If I understand the interrogatory to ask the difference between the ordinary confederated money & the ten per cent. interest-bearing notes, I know of none except the interest.

Int'ry 7th. He says: I do not know of any, or any person that was ready & willing to have given a larger sum of money for that place. I do not know at that time that was worth any more.

Int'ry 8th. The consideration in the deed from Shields to Hood upon record is twenty-seven thousand dollars. I have no other means of knowing anything about the contract between them.

Int'ry 9th. He says: I never saw the original. I have seen a copy as of record in Falls Co. I never saw any other copy. Saw the record in the county clerk's office, at the court-house. I had it done by
199 attorney before closing the trade. J. D. Oltorp examined it. I have examined the record & find no other deed or instrument in writing from Shields or Shields & wife to Hood. I know of no paper a copy of which can be procured at this time by me.

Int'ry 10th. He says: I do not know anything about the five-thousand-&-fifteen-dollar note, & can answer nothing contained in this interrogatory, except that I heard that there was such a note a short time before suit was brought. I had some conversation with General Shields after suit was instituted, but do not now remember what it was.

Int'ry 11. He says: I know of no other note, except the one alluded to in direct interrogatory, which is in the hands of Dale & Bassett, in Brenham. I know of no balance due on *no* other note pertaining to the land. I have stated in direct interrogatory that L. G. Scogin & myself took up a nine-thousand-dollar note, with a credit on the same, between three & four thousand. We paid Gurley in land for said note.

Int'ry. 12. He says: My information as to the existence of the five-thousand-&-fifteen-dollar note was obtained L. G. Scogin, only a short time before the suit was instituted. I was not aware that
200 all the purchase-money was not paid until I was notified by E. J. Gurley of the existence of the nine-thousand-dollar note referred to in direct interrogatory. I did not but had good reason to believe, that all the purchase money had been paid, because Hood told me. I have stated that J. D. Oltorf had examined the records for us. The instrument recorded purports to be a deed within itself, with warrants upon the completion of the payments mentioned therein, and that the time for the last payment had expired previous to the purchase by Scogin & myself; and Hood told us that the last dollar of the purchase-money had been paid, & the record of the deed from Shields & wife to Hood I never saw until to-day, but had it examined for us, by attorney, as before stated, on the day we closed the trade with Hood. Oltorf informed us, because we got him to examine the records, & inform us. We sought it for our own protection. I did not know that any of the purchase-money was unpaid, as before stated. We enquired of Hood before closing the trade with him. We examined the records, by attorney, as before mentioned. We did not enquire of Shields—did not see him—as stated before. I had some conversation with General Shields after the purchase, but do not now remember. The conversation was

of a general character. This conversation was after the suit was brought.

JAMES S. HANNA.

201 *Answers of D. C. Adams to direct and cross-interrogatories propounded to him in the above-entitled cause.*

Int. 1st. He says: I resided in Marlin, Falls Co., Texas, from 1852 to present date. I became acquainted with L. G. Scogin in the spring of 1863, at Marlin. At that time he resided in Robertson Co., and moved to Falls in 1864, where he has resided ever since. As regards J. S. Hanna, I had no personal acquaintance. I became acquainted with H. M. Hood, sr., in 1860. He was here a portion of his time from 1860 to the spring of 1863. Was informed that he resided in Eastern Texas. I have known B. G. Shields from 1852 up to the present date. He then & still resides in Falls County. As to H. M. Hood, jr., I had a slight acquaintance, and knew but little of his whereabouts. I have known Z. Bartlett from 1851, to present date. He then & still resides in Falls County.

Inte'y 2. He says: As to the solvency of L. G. Scogin, I considered him solvent for any amount he would contract for, since I have known him, up to the present date. The amount of his property subject to execution I do not know. As to solvency of J. S. Hanna, I know nothing of his pecuniary circumstances. As to H. M. Hood, s'r., he was re-
202 puted very wealthy, but as to his property subject to execution, I know nothing. As to B. G. Shields, he was considered solvent, and perfectly responsible for his liabilities. The amount of his property subject to execution, I am not able to state. As to H. M. Hood, jr., I know nothing of his solvency or insolvency. As to Z. Bartlett, there was not a man of more extreme credit in Falls County from 1859 to 1861, or '62. Between the dates of 1862 and 1867, he became a bankrupt—at present is considered solvent. Amount of property subject to execution, I know nothing. At the date of the sale of land by H. M. Hood, sen., to L. G. Scogin & Hanna, the lands were worth from 12 to 18 dollars per acre.

Inte'y 3. He says: The exact date that L. G. Scogin took possession of the place I cannot state, but was in possession in 1864; and at the present date is in possession, with two others holding under him, to wit, Morris & Perkins, of Marlin, and J. W. Brooks. As to the improvements on said land, there has been cleared and put into cultivation by the said Scogin some seven or eight hundred acres of land, in addition to the amount in cultivation when purchased by him or them. From my knowledge of the costs of putting lands in a state of cultivation, I would say that it could not be done for less than from eight to twelve dollars per acre. There has also been builded by the said Scogin a
203 good gin-house and screw, worth one thousand or twelve hundred dollars, and many buildings, houses, and cabins, estimated to be worth eighteen hundred or two thousand dollars.

Int. 4th. He says: That confederate money was the only circulating medium, and almost exclusively used in all business transactions. As to the value of confederate money, compared with gold and silver, at the date referred to, I know nothing; but it was taken at par in all business transactions and the payment of debts, and was taken in and for the purchase property at par. I know of Judge F. W. Copps, of this place, having purchased various lots of cottoh at eight cents per pound, in confederate money, about the date referred to. The two per cent.

interest-bearing treasury notes, were sought after by men of capital. Among persons of small means, but little if any difference was made. Cannot state what kind of money was paid H. M. Hood, sen., for the land, except from what I heard.

Inte'y 5. He says: As to this interrogatory I know but little. I know that Scogin and Hanna bought the land of H. M. Hood, senior, but know nothing of proposition or price per acre.

Inte'y 6th. He says: That H. M. Hood, senior, bought the land
204 of B. G. Shields, in the year 1859. H. M. Hood, sen., was reputed wealthy, and perfectly solvent. Of H. M. Hood, jr., I know nothing. I know nothing of the payments or notes.

Inte'y 7th. He says: As to the 5,015.00-dollar note, or where Z. Bartlett and B. G. Shields were (they resided in this county) on the day of purchase, I know nothing.

Inte'y 8th. He says: I know of nothing further that would benefit either party.

Answer to cross-interrogatories as propounded to the witness D. G. Adams.

Inte'y 1st. He says: I have no interest whatever in the result of the suit.

Inter'y 2nd. He says: I have resided in Falls County, Texas, from 1852 to the present date. I went into the army in February, 1862, and remained till summer of 1864. Was at home on furlough in the spring, 1863, when L. G. Scogin and J. S. Hanna purchased the land from H. M. Hood, senior. Previous to the year 1863, in February, I was in the drug business. I returned on furlough in 1864, and L. G. Scogin was in possession of the land.

Inte'y 3rd. He says: I have always regarded L. G. Scogin as solvent. His property consisted of lands, negroes, and stock. His principal loss by the war was his negroes. I know nothing of J. S. Hanna's pecuniary means. As to Hood, sen., I have stated that he was reputed
205 wealthy. His property consisted in negroes, land, and stock. His principal loss was his negroes, I suppose, from the result of the war. Of H. M. Hood, jr., I know nothing *of*. B. G. Shields, I have stated, was solvent; property consisted in lands, negroes, and stock. Principal loss, negroes, from the war. Of Z. Bartlett, I have stated in direct int'y; the result of the war was bankruptcy. All the persons mentioned in direct int'y, with whom I was acquainted, except Z. Bartlett, were considered solvent at the emancipation of the slaves. As I have stated, I know nothing of Hood, jr., or J. S. Hanna, before or after the war, as to their solvency.

Inte'y 4th. He says: Don't remember the date of the death of H. M. Hood, sen. Know of no property left in Falls County. When he moved he took all his stock, negroes, and wagons with him Of H. M. Hood, jr., I know nothing.

Inte'y 5th. He says: I have stated that Scogin & Hanna purchased the land in 1863, and I found Scogin in possession in 1864; the very date of possession I can't state. He used it for agricultural purposes.

Inte'y 6th. He says: I have stated in direct inte'y that confederate money was taken at par in business transactions and in the payment of debts and purchase of property. I know of no sale or offer of
206 sale of confederate money for gold at that time. As a general thing throughout the community no difference was made. I know of no exchange of confederate money for gold or silver. I can remember of no persons having taken it for land or negroes in my own knowl-

edge, but have heard number of persons say that they did. I have stated that it was at par in payment of debts and business transactions generally. I have stated in direct int'y that it was worth from 12 to 18 dollars per acre. I do not know what Hanna & Scogin paid Hood. I know of no such military order. I have stated that no difference was made in confederate money, except by men of capital, who sought the interest-bearing notes for the interest.

Inte'y 7th. He says: I have answered the 5th int'y as fully as I can.

Inte'y 8th. He says: I cannot state what Hood was to give Shields for the place.

Inte'y 9th. He says: I have never seen any instrument of conveyance of said land from Shields to Hood, neither have I seen a copy on record or otherwise. I know of no other answer that I could make to this interrogatory.

Int'y 10th. He says: I have stated that I know nothing of the $5,015 dollar note, or any other note. I have stated all I know to this interrogatory.

207 Inte'y 11th. He says: I know of no note or balances due on any note, or how they were paid.

Inte'y 12th. He says: I know nothing of any note, of my knowledge, existing or that did exist in their land transactions, or anything that would throw light on the points at issue.

D. G. ADAMS.

STATE OE TEXAS, *County of Falls:*

I, M. H. Curry, district clerk of said county of Falls, do hereby certify that the foregoing answers of J. S. Hanna, L. G. Scogin, J. D. Oltorf, and D. G. Adams, the witness' before named, were made before me, and were sworn to and subscribed before me, by the said witnesses respectively.

Given under my hand and official seal this the 9th day of May, A. D. 1870.

M. H. CURRY,
D. C. F. C.

208 The original note read in evidence Jan'y 24, 1871, of H. M. Hood, sen'r, pay'e to order of B. G. Shields, with the assignment & certificates thereto, is in words, to wit:

Note of H. M. Hood, sen'r, d'c'd.

$5,015.00.] FALLS COUNTY, TEXAS, *April 1st*, 1860.

On or before the 1st day of April, eighteen hundred & sixty-two, I promise to pay to the order of B. G. Shields the sum of five thousand and fifteen doll's, for value rec'd, negotiable & payable at the Union Bank, in New Orleans, La.

H. M. HOOD, SEN'R.

And is endorsed on the back thereof in words, to wit:

"For value received, I assign, transfer, set over, and deliver the within note, with all the equitable and vendor's lien on the land for the purchase-money for which it was given to Z. Bartlett.

B. G. SHIELDS."

And endorsed. Filed Jan'y 24, 1871.

M. HOPKINS, *Clerk.*

The certificate attached thereto is in words, to wit:

(Copy)

$5,015.00.] FALLS COUNTY, TEXAS, *April 1st*, 1860.

On or before the 1st day of April, eighteen hundred and sixty-two, I promise to pay to the order of B. G. Shields the sum of five thousand and fifteen dollars, for value rec'd, negotiable and payable at the Union Bank, in New Orleans, La.

(Signed) H. M. HOOD, *Sen.*

(Endorsed in blank:) B. G. Shields.

THE STATE OF TEXAS, *County of* :

Before me, the undersigned authority, personally came Zenas
209 Bartlett, to me known, who, upon oath deposeth & saith that the note of which the foregoing is a copy, and which note will be hereunto attached, is the property of affiant, and that it is a just, correct, and unpaid claim against the estate of said H. M. Hood, sen'r, deceased, and that all legal offsets, credits, and payments known to affiant have been allowed.

Z. BARTLETT.

Sworn to and subscribed before me, on this 27th day of Apr., 1867.
Witness my hand seal of office at Marlin, this date above.
[SEAL.] FRANK. BURNS,
Co. Judge F. Co.

And on the same day, to wit, January 24, 1871, the complainant read in evidence certified copy of the last will of H. M. Hood, sr., deceased, which is words, to wit:

210 *Will of H. M. Hood, sen'r, dec'd.*

T. M. Hood, dec'd. "Will." Certified copy.

STATE OF TEXAS, *Washington County:*

Know all men by these presents that I, Henry M. Hood, of the State and county above written, do hereby make this my last will and testament in manner and form following, that is to say:

Item 1st. In the event of my death before all my just debts are paid, I desire all my property, both real and personal, to be kept together, except what I have heretofore advanced to my children, and what is hereafter mentioned as an advancement to my son John William Hood, until all my said debts are paid.

Item 2nd. Having given to my sons Richard L. Hood, Henry M. Hood, and Theodore C. Hood, and my daughters Sarah Stern and Susan E. Hume negro property to the value of three thousand seven hundred dollars, it is my desire for my son John W. Hood, if I do not give and advance to him negroes of like value previously, to have and receive from my estate immediately after my death negroes of the value of thirty-seven hundred dollars, said negroes to be valued at the valuation of like negroes at the year eighteen hundred and sixty. It is also
211 my desire for my daughter Martha E. Hood, and my granddaughter Lemor D. Edwards, who are minors, to have an equal advance-

ment in negro property before a division of my estate, at the valuation of like negroes in the year 1860, but not until my just debts are paid.

Item 3d. It is my will that my wife, Mary M. Hood, in the event she should survive me, have a child's part of my negro property, and that she select such a part of my real estate as she may like best, as a residence during her natural life.

Item 4th. It is my desire that my wife, Mary M. Hood, at my death, have all my stock, farming tools, household and kitchen furniture, or so much thereof as she may deem necessary for her house, and if any part of such stock, tools, and furniture is left and not taken and appropriated by my wife, I wish the same to be sold and the proceeds thereof to be divided equally among my children and my granddaughter above named, except Henry M. Hood.

Item 5th. It is my will and desire that, after all my just debts
212 are paid, my children and granddaughter above named, and my wife, Mary M. Hood, (except Henry M. Hood,) are made equal in negro property; then the remainder of my negroes to be equally divided, share and share alike, among them, except Henry M. Hood, who I do not desire shall have any further share in my estate beyond what I gave him in Harrison County, Texas.

Item 6th. It is my wish that after my wife, Mary M. Hood, select such portion of my real estate as she may desire for her residence during her natural life, for the remainder of said real estate to be equally divided amongst my children and granddaughter above named, except Henry M. Hood.

Item 7th. It is my will that all the property, both real and personal, given and bequeathed to my wife, Mary M. Hood, at her death be equally divided among my children and granddaughter, except Henry M. Hood.

Item 8th. It is my wish and desire that all the ready money and notes that I have at my death, after paying my debts, be equally divided among my said children, granddaughter, and my wife, Mary M.
213 Hood, except Henry M. Hood, and my railroad stock, if not previously disposed of, be sold, and the purchase-money equally divided among my children and granddaughter, except Henry M. Hood.

Item 9th. Having heretofore given my grandson William Motly as much of my estate as I design for him, it is my will that he have no farther interest or share whatsoever in said estate, or the division of the same.

Item 10th. It is my will and desire that, if any of the heirs and distributors of my estate above named die without legal issue surviving, then his or her share of said estate is to revert back to such of my children and granddaughter above named or their issue as may be living at the time, and be held by them as if such decedent had never lived.

Item 11th. It is my will and pleasure for the county court pertaining to estates to take no other action or control over my estate than to probate this my last will & testament, and record an inventory of the same, and that my executors hereafter named be qualified without additional security on their bonds, and that they be allowed the usual
214 fees for their administration.

Item 12th. I do hereby appoint my wife, Mary M. Hood, my son-in-law A. B. Stone, and my son T. C. Hood, my executors of this my will & testament, hereby revoking all other former wills & testaments by me at any time made. And I do also hereby request my wife, Mary M. Hood, to take charge of, educate, and bring up our granddaughter in the way she may judge best for her interest.

In testimony whereof I have hereunto set my hand and affixed my scroll for seal this the 10th April, A. D. 1864.

H. M. HOOD, SEN. [SEAL.]

Test:

JNO. H. WEBB.
T. G. BROWN.
JOHN H. STONE.

Codicil.

On review my will of this date, I will and desire that that parts which directs all my real and personal estate to be kept together, as stated in item 1st, and for the object therein set forth, be so changed as to allow my executors to sell at discretion my real estate in Harrison County, and also in *McClellan* County, and appropriate the money arising
215 from such sale to the payment of my just debts, and, if anything over, to be distributed among my legatees as recognized in my will according to the wording and intent thereof.

In testimony whereof I have hereunto set my hand and affixed my scroll for seal this the 10th April, A. D. 1864.

H. M. HOOD, SEN. [SEAL.]

JOHN H. WEBB.
T. G. BROWN.
JOHN H. STONE.

THE STATE OF TEXAS, *Washington County*:

I, John Welch, clerk of the county court of said county, certify that the above and foregoing is a true & correct copy of the will and codicil of H. M. Hood, deceased, now in file & duly probated & recorded in my office.

Witness my hand and the seal of said office affixed at office, in Brenham, this 7th June, A. D. 1869.

[L. S.] JNO. WELCH,
Clerk C. C. W. C.

216 And afterwards, to wit, on the 27th day of January, A. D. 1871, the following entry appears upon the minutes of the court, to wit:

Decree.—Entered January 27, 1871.

FRIDAY MORNING, *January* 27, 1871.

P. DE CORDOVA, ASS'EE IN BANKRUPTCY OF Zenas Bartlett, complainant,
vs.
MARY HOOD & T. C. HOOD, EXECUTORS, &C., of H. M. Hood, dec'd, L. G. Scoggin, and J. S. Hanna, defendants.
} No. 36. In chancery.

This cause having been set down for final hearing on bill and answer of defendants Scoggin and Hanna, and pro confesso against defendants Mary Hood and T. C. Hood, executors of H. M. Hood, and now the complainant, and the said Scoggin and Hanna, defendants, appearing by their respective solicitors, and the court having heard the arguments, and having considered the bill, answer, and proofs, and being fully ad-

vized are of the opinion that complainant is not entitled to a decree for a foreclosure of a vendor's lien on the land described in the bill, and doth order, adjudge, and decree that the bill be dismissed as to the defendants L. G. Scoggin and J. S. Hanna, and the defendants Scoggin and Hanna recover of and from complainant their costs in this behalf expended.

It is further ordered, adjudged, and decreed by the court that the pro confesso heretofore taken in this court be made final against T. C. Hood and Mary Hood, executors of the estate of H. M. Hood, dec'd,
217 and that P. de Cordova, assignee in bankruptcy of Zenas Bartlett, do have and recover of and and from T. C. Hood and Mary Hood, executors of the estate of H. M. Hood, dec'd, the sum of eight thousand five hundred and forty-seven $\frac{15}{100}$ dollars to be levied de bonis testatoris in the hands of said executors. It is further ordered that complainant have and recover his costs in this case from said executors.

And thereupon, afterwards, to wit, on the first day of February, A. D. 1871, the complainant, in the foregoing and recited cause, filed his petition for and bond for appeal. And the same were duly allowed and approved by the judge.

The petition for appeal is endorsed, to wit:

No. 36. Chancery. De Cordova, assignee, &c., v. Hood et al. Petition for appeal. Filed Feb. 1, 1871. M. Hopkins, clerk.

And is in words, to wit:

218 *Petition for appeal.*

Petition for appeal filed Feb. 1, 1871.

M. HOPKINS, *Clerk.*

P. DE CORDOVA, ASSIGNEE IN BANKRUPTCY of Zenas Bartlett, complainant,
vs.
MARY HOOD & T. C. HOOD, EXECUTORS H. M. Hood, s'r, deceased, L. G. Scogin & J. S. Hanna, defendants.
} No. 36. Chancery.

In the circuit court of the United States for the western district of Texas, holding sessions at the city of Austin.

To the honorable the circuit judges of the circuit court of the United States for the western district of Texas, at Austin:

The petition of Phineas de Cordova, assignee in bankruptcy of Zenas Bartlett, a citizen of the State of Texas, respectfully represents that, during the present term of the (January term, A. D. 1871) circuit
219 court of the United States for the western district of Texas, at *at* Austin, to wit, on the 27th day of January, A. D. 1871, a final decree was rendered by said court in a certain cause there pending in said court in chancery, wherein Phineas de Cordova, assignee in bankruptcy of Zenas Bartlett, was complainant, and Mary Hood and T. C. Hood, executors of H. M. Hood, s'r, dec'd, L. G. Scogin and J. S. Hanna were defendants, as by the proceedings in said cause now remaining of record in this court will fully appear; that the decree so rendered was erroneous, imperfect, and contrary to the rights of said complainant and the principles of equity in several respects: First, in dismissing the bill of complaint as to the defendants L. G. Scogin and J. S. Hanna, & fail-

ing to enforce the equitable rights of complainant by a foreclosure of the vendor's lien as against the said defendants L. G. Scogin & J. S. Hanna, on the lands mentioned in the exhibits to said bill, as was in said bill duly prayed; and, secondly, in not doing full and complete justice to the complainant in other respects, as will appear by reference to the proceedings in said cause; for which said errors & irregularities & such others as may appear in the proceedings of said cause, which may
220 be cognizable by the appellate court, the said complainant, P. de Cordova, assignee in bankruptcy of Zenas Bartlett, claims an appeal from the said decree of said circuit court to the Supreme Court of the United States at its next term at Washington.

Wherefore your petitioner prays *that* your honor to grant him such appeal upon the usual terms.

W. M. WALTON,
CHANDLER & CARLETON,
Counsel for Petitioner.

The appeal prayed for in this foregoing petition is hereby allowed. January 31st, 1871.

T. H. DUVAL, *U. S. Judge.*

221 And on the same day, to wit, Feb. 1, 1871, bond for appeal was filed, endorsed: No. 36. Chancery. De Cordova, assignee, &c., vs. Mary Hood et al. Bond. Filed Feb. 1, 1871. M. Hopkins, clerk. And is in words, to wit:

Bond for appeal.

UNITED STATES OF AMERICA,
Western District of Texas:

Know all men by these presents that we, P. D. Cordova, assignee in bankruptcy of Zenas Bartlett, and F. W. Chandler and J. E. Rector, all citizens of the State of Texas, are held and firmly bound unto Mary Hood & T. C. Hood, executors of H. M. Hood, s'r, deceased, and L. G. Scogin and J. S. Hanna, in the full and just sum of five hundred dollars, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns, forever; for which payment, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly & severally, firmly by these presents, sealed with our seals, & dated this 31st day of January, A. D. 1871.

Whereas, at a term of the circuit court of the United States for the western district of Texas, at Austin, in a cause pending in said court, wherein Phineas de Cordova, assignee in bankruptcy of Zenas Bartlett, was complainant, and the obligees herein, viz, Mary Hood & T.
222 C. Hood, executors of H. M. Hood, senior, deceased, and L. G. Scogin and J. S. Hanna were defendants, said cause being numbered thirty-six (36) on the chancery docket, a decree was rendered dismissing the bill of complaint as to the defendants L. G. Scogin & J. S. Hanna, and giving judgement against the said Mary Hood and T. C. Hood, executors of H. M. Hood, s'r, deceased, said decree being entered on the 27th day of January, A. D. 1871, a day during the term of said court commencing on the 1st Monday in January, A. D. 1871; and the said P. de Cordova, assignee as aforesaid, having obtained an appeal to reverse the decree in said cause rendered & entered as aforesaid, and also a citation directed to the said obligee herein citing and admonish-

ing them to be and appear at the Supreme Court of the United States, to be holden at Washington on the 1st Monday in December next:

Now, the condition of the above obligation is such, that if the said obligor P. de Cordova, assignee, &c., as aforesaid, shall prosecute his appeal to effect, and answer all damages & costs if he fails to make his plea good, then the above obligation to be void; otherwise to remain in full force & effect.

223 P. DE CORDOVA, [SEAL.]
Assignee in Bankruptcy of Zenas Bartlett,
By W'M WALTON, *Att'y.*
F. W. CHANDLER. [SEAL.]
J. E. RECTOR. [SEAL.]

Approved.

T. H. DUVAL, *U. S. Judge.*

224 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing two hundred and twenty-four written pages contain a full transcript of the record in case No. 36, chancery, entitled Phineas de Cordova, assignee in bankruptcy of Z. Bartlett, bankrupt, vs. T. C. Hood and Mary Hood, executor and executrix of the last will of H. M. Hood, sen'r, deceased, L. G. Scoggin and J. S. Hanna, defendants, being a full and true copy of all the proceedings had in said cause as they appear of file and record. And I further certify that no citation was issued, the appeal having been prosecuted during the session of court, which did not finally adjourn until the 7th day of March, A. D. 1871.

In testimony whereof I have hereunto set my hand and the seal of said circuit court, at Austin, this 12th day of August, A. D. 1871.

[SEAL.] MATTHEW HOPKINS, *Clerk.*

(Indorsement on cover:) No. 372. P. de Cordova, assignee in bankruptcy of Zenas Bartlett, appellants, vs. Mary Hood, T. C. Hood, ex't'x & exe'r of H. M. Hood, s'r, deceased, L. G. Scogin, & J. S. Hanna. W. Texas C. C. U. S. Filed 4th November, 1871.

Supreme Court of the United States.

P. De Cordova, Assignee in Bankruptcy of Zena Bartlett, Appellant,

v.

Mary Hood and T. C. Hood, Executrix and Executor of H. M. Hood, Sr., deceased, L. G. Scogin, and J. S. Hanna, Appellees.

No.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF OF COUNSEL FOR APPELLEES, SCOGIN AND HANNA.

For the proper understanding of the question which we propose to present to the court on behalf of the appellees, Scogin and Hanna, in the absence of an assignment of error, and without as yet a brief having been filed for the appellant, it will be sufficient for us to state, that this suit, as it appears from the record, was brought by the appellant, as the assignee in bankruptcy of the estate of Zena Bartlett, a bankrupt, against the respondents named in the bill, for the purpose of collecting, by the decree of the court declaring and enforcing a vendor's lien, a note for the sum of $5,015, made April 1, 1860, in Falls county, Texas, by H. M. Hood, Sr., and payable to the order of B. G. Shields, at the Union Bank, in New Orleans, Louisiana, on the first day of April, 1862.

The facts alleged by appellant in his original and amended

bills are substantially as follows, to wit: Said B. G. Shields, on the 5th of February, 1859, sold to said H. M. Hood, Sr., about eighteen hundred acres of land, in said Falls county, Texas, in consideration of the sum of twenty-seven thousand dollars. And said Shields took as the last payment on said land a note of said H. M. Hood, Sr., and H. M. Hood, Jr., for the sum of nine thousand dollars, with interest at the rate of eight per cent. per annum from January 1, 1860, payable to the order of said Shields, at the Union Bank, in New Orleans, Louisiana, on the 1st of April, 1862. And said Shields, on said fifth day of February, 1859, executed to said H. M. Hood, Sr., a deed for said land, the consideration of which in part, as therein expressed, is as follows, (Print. Rec., p. 6:) "Nine thousand ($9,000) dollars on the first day of April, eighteen hundred and sixty-one, with interest at the rate of eight per cent. per annum from twelfth day of January, 1860, for which he has executed to me his promissory note, negotiable and payable at the Union Bank, in the city of New Orleans, at the time mentioned; and nine thousand dollars on the first day of April, eighteen hundred and sixty-two, with the same rate of interest from same time—January, 1860—and negotiable and payable at the same bank in New Orleans." And, after the description of the land and premises sold, said deed further continues: "These two tracts, comprising eighteen hundred acres, I sell and convey by this deed to H. M. Hood for the consideration aforementioned, together with all and singular the rights, hereditaments, and appurtenances to the same belonging or in anywise appertaining: to have and to hold all and singular the premises aforesaid unto the said Hood, his heirs and . . . . forever; and upon the completion of the payments before mentioned, I do bind myself, executors, and administrators, to warrant and defend the said premises to the said Hood, his heirs and assigns, against all persons lawfully claiming the same, or any part thereof; and do bind myself to surrender possession of said premises on the first day of January, 1860, reserving the right of cultivating and occupying the same until that date.

It is further alleged in the bill, that to secure the payment of the nine thousand dollars mentioned in said note, a vendor's lien was expressly reserved by the terms and conditions of said deed in favor of the vendor therein against the vendee, H. M. Hood, Sr., his heirs and assigns, and all and every person whomsoever who might subsequently acquire said lands. And after the making of said note, secured by the vendor's lien, as aforesaid, viz, on April 1, 1860, there was due on said note the sum of $5,015, and said H. M. Hood, Sr., executed to said Shields his said note for that sum, in lieu and place of said note for $9,000, and in evidence of the balance of the money due thereon. (Print. Rec., 16.)

Complainant also alleges that the original note for $9,000, dated April 1, 1862, "was signed by H. M. Hood, Sr., and by H. M. Hood, Jr., but that the signiture of H. M. Hood, Jr., was signed thereto without any prior understanding with or requirement of said B. G. Shields, the payee in said note, and with no intent or purpose whatever to affect or impair the vendor's lien resting on said land, it being retained in the first instance to secure the payment of the purchase money, part of which was represented by said note for $9,000; that subsequently, when, as alleged in the original and first amended bills, the first original note for $9,000 was delivered to the said H. M. Hood, Sr., by the payee, B. G. Shields, and the said note for $5,015, mentioned in said original and amended bills, taken for the balance then due on said note for $9,000, the name of said H. M. Hood, Jr., for some reason unknown to your orator, was not signed thereon; but your orator distinctly charges that said note for $5,015 was executed and delivered for the balance due on said note for $9,000, and for no other consideration; and that the vendor's lien which existed to secure the payment of the note for $9,000 equally existed and yet exists, to secure the payment of said note for $5,015." (Print., Rec. pp. 31,32.)

In the fall of 1862 said note for $5,015 was transferred by said Shields to said Bartlett by a blank indorsement.

But it is alleged in the bill and proved by the testimony of said Shields and Bartlett, that it was understood at the time between them that there was a vendor's lien on the land as security for its payment, and the right to said lien was understood and intended to be transferred by the assignment of the note.

Possession of the land was delivered to Hood at the time stipulated in Shields's deed, and he continued in possession until May 22, 1863, when, in consideration of $45,000 Confederate States interest-bearing notes, he sold said land to the appellees Scogin, and Hanna, and executed to them a full and absolute deed for the same. Appellant charges, however, that they purchased said land with both actual and constructive notice of the existence of said vendor's lien to secure said note of $5,015, and that the purchase by said Scogin and Hanna was not *bona fide*, and gave them no right to hold said land discharged from said vendor's lien, because they had paid no valuable consideration.

These allegations were expressly and positively denied by the appellees, Scogin and Hanna, in their answer. And the testimony shows that they paid very nearly, if not quite, as much as the land was worth, or could have been sold for at the time in the currency with which they paid for it. And certainly that they paid a fair and adequate consideration to fully establish the *bona fides* of the transaction. It is also abundantly established by the testimony, as well as their answers, that the purchase was made in good faith, without the slightest knowledge or even suspicion by them of the existence of any lien or incumbrance of any kind upon the land, being positively assured by Hood that he had taken up and discharged the notes given by him for said land; and being also assured by the attorney, whom they employed to examine the title of said land for them before they would purchase it, that Hood's title to the land was complete and perfect in every particular. It is beyond question, therefore, that the only notice with which appellant can claim that they are affected, is the

constructive notice with which the law charges them by reason of the record of the deed from Shields to Hood, previous to their purchase.

Hood seems to have died in Washington county, Texas, in 1864 or 1865, where he then resided. His will was admitted to probate in said county, and his estate was being administered by his executrix and executor in pursuance with its provisions at the time this bill was filed, but they failed to appear or answer the same.

There is no allegation in the bill that the note could not be collected without a resort to a court of equity, or that the estate of Hood was insolvent and unable to pay the same. On the contrary, the testimony strongly tends to prove the reverse.

The answers of Scogin and Hanna show, and the testimony establishes the fact, that although living in a different county, and at some distance from the land, Hood was giving such publicity to his wish to sell it, that they heard of it, and entered into negotiations with him for its purchase. While Shields and Bartlett, (the latter, as the testimony shows,) being in the town on the day when and where the trade was consummated, (Print. Rec., p. 671,) who lived in a few miles of the land, took no steps to stop the sale, assert the alleged lien, or even notify the public or the purchasers of its existence. And in fact the existence of the note in question, and the claim that it was a lien upon the land, was wholly unknown to Scogin, though living upon the land in two or three miles of Bartlett, and intimately acquainted with him, until the lapse of two or three years after he had gone into possession of, and had expended nearly double the amount of the note in improvements upon it.

The record does not contain the opinion of his honor the circuit judge, by whom this case was heard in the court below, and there is nothing in the record to indicate the particular ground upon which the decree in the court below was rendered. The matters presented, however, in the bill, answer, and testimony upon which the cause was

heard, suggest to us the following questions, upon one or all of which the judgment must be affirmed, viz:

1. Was there a vendor's lien to secure the payment of the original note for $9,000 given by H. M. Hood, Sr., and H. M. Hood, Jr.?

2. If so, did the lien continue, or could it be created by any subsequent agreement, as a security for the note upon which the bill is brought?

3. Did the lien, if the land had not been sold by the original vendee, pass by the transfer of the note by the payee, Shields, by his blank indorsement, to Bartlett, and by the assignment of the latter to the assignee of his estate as a bankrupt?

4. If there was a lien in favor of the note upon which the bill is brought, which the appellant could assert against the original purchaser, does this lien continue and attach to the land after its purchase by the appellees, Scogin and Hanna?

5. Will a court of equity enforce a vendor's lien, unless it appears redress cannot be had in a court of law?

6. Does not the facts repel any inference that a vendor's lien was retained as security for the note; or if there was, did not the laches of Bartlett and Shields, in failing to notify the purchasers of the land previous to their expenditure of large sums in improvements, bar and conclude the appellant from its assertion?

Unquestionably the general current of the decisions in the American courts, in those States where a vendor's lien is recognized, hold that an implied lien will be held to exist whenever the vendor has taken the personal security of the vendee only, by whatever kind of instrument the indebtedness is manifested, unless it is shown that it was the express contract or clear intention of the parties to waive such lien. On the other hand, it seems to be equally as well established by the decisions in a large majority of the cases that the lien is waived whenever any distinct and independent security is taken for its payment, whether it is a mortgage on other property or the bond or note of the

vendee with a surety, or a negotiable note drawn by the vendee and indorsed by a third person, or drawn by a third person and indorsed by the vendee. (1 Lead. Ca. Eq., 365, and cases cited St. Eq. Juris., sec. 1217, *et seq.*) Some of the cases, it is true, seem to hold that this is not the effect of taking independent security for the payment of the purchase money; but it is a presumption from this fact, which may be rebutted or repelled by proof that such was not the intention or agreement of the parties. It is believed, however, that it will be found that most of the cases in support of this qualification of the rule are where the lien is expressed in the note, or in the instrument conveying the title; otherwise it conflicts with the true theory upon which the lien is sustained, and upon which it has always been put when discrimination is made between the vendor's lien, properly such, and an equitable lien retained by the contract of the parties, which is that the vendor's lien exists, not by virtue of any contract between the parties, but by implication of law. (Carpenter *v.* Mitchell, 54 Ill., 126.) This is certainly the doctrine as held by the Supreme Court of Texas upon the subject, for says that court: "A vendor's lien upon land is not established by proof that the parties agreed that one of them should have a vendor's lien upon certain land. Such a lien arises by operation of law when certain facts exist. If the facts do not exist, the vendor's lien does not arise." (Wynn *v.* Flannagan, 25 Tex., 778.)

And further say the court: "The objection which was taken by the counsel for the defendant to the parol testimony which was introduced to show that Wynn agreed with Flannagan that he should have a lien on the whole of the land, ought to have been sustained. The testimony was inadmissible; first, because its effect was to vary the terms of the contract, as shown by the note and title bond, taken together. Secondly, because it purported to establish a lien on land, not by showing such facts as would give rise to the vendor's lien, but by showing that the parties had agreed that other facts should give the plaintiff the same

rights as if he was, indeed, the vendor of the whole of the land." It is true the question before the court in that case was not precisely that which we are now considering, but the principles announced seem to us fully as applicable to it as to the case then before the court.

The same theory of the law seems to us to be sustained by the great weight of Judge Story's opinion, in the case of Gilman *v.* Brown, (1 Mason, 212,) for says he "I have no hesitation to declare that, taking the security of a third person for the purchase money ought to be held a complete waiver of any lien upon the land, and that, in a case standing upon such a fact, it would be very difficult to bring my mind to a different conclusion." Though, as the case did not require to be put upon the ground above stated, he added, "At all events, it is *prima facie* evidence, and the *onus* is on the vendor to prove, by the most cogent and irresistible circumstances, that it ought not to have that effect." And this qualification, evidently given *ex gratia*, is perhaps the most substantial foundation upon which a claim to revivify a lien by parol testimony, which was waived by taking security, has to rest. But it is the cogent reasons and sound conclusions expressed in the first instance by Judge Story which are cited with approbation, and indorsed by the Supreme Court of Texas. (See Parker County *v.* Sewell, 24 Tex., 238.)

But if it is held that taking security raises merely a presumption of the waiver of the lien, which may be removed by evidence, we submit that the "cogent and irresistible circumstances" which are required in Judge Story's opinion to repel the presumption are wanting in the case now before the court. The only evidence upon the point in the record is that of the vendor, Shields. (Print. Rec., pp. 52–55.) And while he is certainly positive enough in his statements, and we question not the honesty of his convictions, yet it is so manifest, from the perusal of his deposition, that he is totally unable, or has at least wholly failed to discriminate between his conclusions and convictions from the facts, and the facts themselves, that his evidence is of

little, if any, aid in determining what the facts indeed were. It is clearly shown that both the parties to the note were abundantly solvent; and the fair inference from the facts as they appear in the record is that, if it was the intention to retain a vendor's lien when the deed was drafted, it was in reality, if not in design, abandoned or waived by the acceptance of the personal security of H. M. Hood, Jr. (Vail *v.* Foster, 4 Comst., 312; Johnson *v.* Sugg, 13 S. & M., 346; Francis *v.* Hazeling, Hardin, 48; McClure *v.* Harris, 12 B. Mon., 265; Marshall *v.* Christmas, 3 Humph., 617; Fish *v.* Howland, 1 Paige, 20.)

2. But if there was a lien to secure the payment of the first note, did it continue after that note was discharged and taken up by the purchaser? The facts concerning this matter are not very fully or clearly stated in the bill, even if their legal effect is correctly set forth. The original note bore interest, and was not due until April, 1862; but the payee, needing money, sometime early in the year 1860, agreed with the debtor to accept in discharge of it a certain amount in cash and his individual draft on a commission house in payment of the balance. This agreement was consummated, the stipulated amount paid, the draft given, the original note given up, and H. M. Hood, Jr., the surety upon it, thereby discharged and released from further liability on it. The draft, however, was not honored by the drawee. (Print. Rec., pp. 23, 24.) On the dishonor of the draft, Shields could have proceeded immediately against the drawee. Or possibly, to take the most liberal view which can be asked for him, on a return of the draft and the money paid him he might have had the agreement canceled and been placed back in *statu quo*. But certainly no new agreement could be made by which a vendor's lien could be created to secure a new and different note. Yet this is precisely what Shields seems to suppose was done. For there is no pretense that the agreement, by which the original note had been taken up and H. M. Hood, Jr., discharged, was annulled; but Shields and H. M. Hood, Sr., adjusted, on terms satisfactory to themselves, the liability

of the latter on the dishonored drafts, which adjustment must have resulted in the giving the note now in question. Thus we see that the note to which it is sought to attach a vendor's lien is too removes from the original contract for the sale of the land, and each of the different contracts into which the parties have entered are altogether different in their most essential legal characteristics.

Shields, in his deposition, says: The draft on New Orleans was for the amount paid on the original notes, and the note now in the hands of the appellant was given for the unpaid balance. But his is the only testimony in any way contradicting the direct and specific allegations in the answer of the appellees, which are to the contrary. Nor does the statement of Shields appear to us to be altogether reasonable or consistent with the object and purpose of the transaction as he himself details it. "The note for $5,015 was given," he says, "in lieu of the original note for $9,000 after deducting a part payment thereon, still retaining the original lien, which was positively and unequivocally stipulated and agreed between us at the time of the execution of said note for $5,015." If this note was merely given for the balance of the first note which was unpaid, why give a new note at all? Why not retain the old note, placing upon it a credit for the amount paid? Now, while we are not disposed to insist that the mere fact of the subsequent execution of another note or instrument of the same legal import and effect, merely as evidence of the continuing existence and validity of the original contract, would of itself operate to waive or discharge a vendor's lien in favor of such debt. We do insist that it is discharged, if the original debt itself is extinguished. Whether this is done by a new contract or in any other way the lien is at an end. Otherwise the parties could by agreement inject into a contract, not itself connected with the sale of land, an agreement for a vendor's lien, which as we have already seen cannot be done. Certainly this is what the parties intended or supposed they had done in making the second contract, even as it is stated by Shields.

The first was the joint and several note of the two parties by whom it was signed, and bore interest from January, 1860, until paid, at the rate of eight per cent. per annum; the second one was the individual note of H. M. Hood, Sr., and bore no interest until it became due, and then by the law of the place of its payment only at the rate of five per cent.

3. If there was a lien, has it passed to the appellant? As it seems to us to have been the object and purpose of the bankrupt law to vest in the assignee not only the property, but also all rights of action, whether legal or equitable, vested in the bankrupt at the time of his adjudication as a bankrupt, we do not question, if the lien passed to Bartlett, that it may be asserted and enforced by the appellant. But the question is, did the lien pass to Bartlett by the blank indorsement of the note to him by Shields? There is certainly considerable conflict on this question in the American authorities, though we think it cannot be denied that the weight of authority, both in respect to number as well as the reasoning in them, support and maintain the negative of the proposition. Indeed, it is believed the larger part of the cases which are generally supposed to sustain the affirmative are so regarded from a failure, often in the court itself as well as those who quote the decision, to discriminate between what is strictly and properly a vendor's lien and an equitable lien secured by the stipulations of the contract, or arising from the retention of the legal title by the vendor until the payment of the purchase money. That a court of equity regards these two classes of securities as differing in origin, and as conferring and securing altogether different rights and privileges, is certainly held by much the larger number of the better-considered cases in which the distinction has been adverted to. The correct rule on this subject, as well as the point first discussed, is thus clearly laid down by the Supreme Court of Illinois.

"While it is the rule," says the court, "that an ordinary vendor's lien for the purchase money of land, which exists not by virtue of the contract between the parties, but merely

by implication of law, is not transferable so as to be enforced in favor of an assignee of the note given for the purchase money, yet when the lien of the vendor arises out of express contract, as by being reserved in the deed, and such reservation recognized on the face of the note, it will pass to an assignee of the notes, and may be enforced in his favor."

"When the lien of the vendor of land arises out of express contract between the parties, it will not be deemed to be waived by the taking of other security for payment of the purchase money, as would be the case with an ordinary vendor's lien, which exists merely by implication of law." (Carpenter *v.* Mitchell, 54 Ill., 126.)

And in the case of Gilman v. Brown, 1 Mason 221, approved as we have already said by the Supreme Court of Texas in the case of Parker County v. Sewell, 24 Tex. 238, and affirmed by this court, (Brown v. Gilman, 4 Wheat., 255,) Judge Story, speaking of the vendor's lien, says: "It is, in short, a right which has no existence until it is established by a decree of the court in the particular case." Upon which Judge Nesbit, in an elaborate and thoroughly considered opinion, remarks: "If this is a correct view of it, and it shall be held assignable, then it must be negotiable, as a possible, but not as an existing lien. I need not stop to demonstrate how adverse such a thing is to well established rules of the law merchant, nor what confusion it would introduce into all business circles of life into which it might enter."

Although the point to be decided is to be determined, it seems to us, by the correct interpretation and true construction of the general rules and principles of equity jurisprudence, and not upon any local peculiarities or particular rulings of the Texas court, yet it is appropriate that we should refer to the decisions of that State which we have found bearing upon the question, especially as upon a casual examination of them it might be thought they maintain the affirmative of the proposition which we are denying.

In the Texas reports to which we have had access since commencing the preparation of this argument, we have found but three cases not yet cited in which the Supreme Court of Texas have referred to the question we are now considering. These are Pinchain v. Collard 13 Tex., 335; Moore v. Raymond, 15 Tex., 554; and Watt v. White, 33 Tex., 425.

In the first of the above cases the court say many authorities might be cited in support of the position that an assignment of the note for the purchase money transfers also the vendor's lien. "Among these may be cited Parker v. Kelley, 10 S. & M., 184; Tower v. Hicks, 4 S. & M., 300; 6 *id.*, 149; Meigs R., 525; Monroe, 287; 18 Ala., 371."

"In opposition to this view, and that such transfer does not pass the vendor's lien, may be cited, 9 Ga. R., 86; 10 Hump. R., 371; 1 Bland, Ch. R., 519; 9 Paige R., 502. "But, adds the court, "it is not essential to express an opinion on the question in this case, because the transaction now in question is not a transfer by the vendor of a note taken by him for the purchase money. The note was made payable to the plaintiff, and not to the vendor, and to show that the plaintiff was entitled to the vendor's lien to secure its payment, it was expressly stated in the note that the land was the consideration for which it was given."

The question was consequently left by the court as still an open one. It may not be amiss, however, to say that an examination of the cases referred to by the court shows, that while the cases referred to, as maintaining that the lien is not transferred by the assignment of the note are in point, of all those cited in support of the transfer of the lien, the case in 5 Monroe, 287, is the only one which in fact sustains the proposition. The cases in Mississippi and Alabama, were where an equitable mortgage had been retained, or only bond for title given. While the case of Graham *v.* McCampbell, Meigs R., 52, draws the distinction clearly and forcibly between the vendor's lien, properly so called, and equitable mortgages, by the retention of a

lien in notes or contracts, or by reason of the vendor's holding the legal title. And while in the latter class of cases the lien passes with the note, it is held that it does not in the former. And to the same effect is the subsequent case, in the same court, of Green *v.* Domoss, 10 Hump., 371.

In the case of Moore *v.* Raymond, 15 Tex., 554, the court briefly say, the assignment in blank of a note for the purchase money of land carries with it the vendor's lien. No authority in support of the proposition is directly cited, the judge who delivered the opinion merely remarking that the question "had been sufficiently considered and definitely passed upon in a late case at Tyler." The reports, however, show that no case involving the question came before the court at its previous Tyler term, and as the learned judge was evidently, as must be seen from the opinion, relying upon his memory, he must have referred to the case which we have cited of Pinchain *v.* Collard, 13 Tex., 335, decided at Galveston, but which, instead of definitely deciding it, left the question open.

It is also to be observed that the note in this case of Moore *v.* Raymond purported on its face to have been given in payment of the purchase money of the property on which the lien was claimed. It is therefore not to be held as authority in a case like the present.

In Watt *v.* White, (33 Tex., 425,) the court say: "And transferring the notes transferred the lien to the respective assignees;" but no authorities are cited, and there is nothing in the opinion showing upon what particular phase of this question the court was passing. Nor does the statement of the reporter enable us to tell whether or not a lien was retained in the notes. We submit, therefore, that this case could hardly be held as a definite adjudication of the question here presented, even in the Texas courts. Nor should it be held, if contrary, as we think it is, to the general current of decisions, as a controlling authority by this court, in this case, even if the question to be decided should be regarded as one of local law. Especially when the same court, but a short time previous, had held, that the doctrine in respect

to liens of this character was contrary to the general policy of the law, and should be restricted, rather than enlarged, by construction. (Autrey *v.* Whitmore, 31 Tex., 623.)

4. Did the lien, if it passed to Bartlett, continue as a charge against the land in the possession of Scogin and Hanna?

That the vendor's lien can be enforced against a purchaser from the first vendor, if he purchased with actual or constructive notice of the lien, is not to be questioned; while that it cannot be enforced against one holding the legal title under the first vendor, who has purchased and paid the purchase money without notice, is equally well settled. (Mackreth *v.* Symonds, 15 Ves., 336.) And if the recitals in the chain of title, under which the purchaser holds, shows that the purchase money has not been paid to the prior vendor, he will be held to have had notice of such vendor's lien. (McAlpine *v.* Burnett, 23 Tex., 649.)

It is, however, to be borne in mind that it is a fundamental rule, in determining whether the lien of the original vendor can be enforced against the subsequent purchaser, that the burden of proof is upon the vendor to show that the purchaser had notice of his lien, or had not paid a valuable consideration. The purchaser does not occupy the position of a subsequent purchaser, seeking to assert the superiority of a junior over an elder title, by showing that he purchased for a valuable consideration. (McAlpine *v.* Burnett, 23 Tex., 649.)

The fact that Hood sold the land for Confederate treasury notes was relied upon by the appellant, as proof that the purchasers had not paid a valuable consideration, but as this question has been effectually and finally, it is believed, put at rest by the decision of this court in the case of Thorington *v.* Smith, (8 Wall., 1,) we need take no further notice of this objection to their title.

The only issue, then, presented by the question now under consideration is, whether the purchasers, Scogin and Hanna, had notice of the lien to secure the note for $5,015, held by Bartlett, before they purchased and paid

for the land and received a deed for it. That they had no actual notice of the alleged lien, or that there was any charge of any kind existing, or claimed to exist, against the land until long after their purchase was fully consummated, is not pretended. It is insisted, however, that they are charged with constructive notice of the alleged lien, which the appellant seeks to enforce by reason of the record of the deed from Shields to Hood previous to their purchase. That they are charged with constructive notice of this deed and its contents we admit; but that it gave them notice that there was a vendor's lien existing at the time of their purchase for security of the note in question, or any other note, we deny. While the record of a deed effects all subsequent purchases with notice as a conclusion of law, which cannot be contradicted, yet it is only with the facts shown by the record with which they are thus charged with notice. Now, what are the facts shown by this deed? Appellant's bill, in some of its allegations, seems to be drawn upon the theory that the deed was not to pass the legal title to Hood until the final payment of the purchase money; and Shields being unable, as we have said, to discriminate between facts and his conclusions from facts, testified directly that such was its character. This, however, is evidently a mistake. The deed shows upon its face that the consideration for which the land was sold, as stated in the deed, had not been paid prior to the execution of the deed, and was not to be paid until long subsequently thereto; and, also, that the vendor was not to be bound on his warranty of title until the purchase money was paid. Nevertheless the land was conveyed, and the title passed to the vendee by the deed. And while, if the facts were as stated in the deed, equity gave the vendor a lien upon the land for the purchase money, no lien was retained in the deed for its security. The notice in the deed that the consideration had not been paid in no way varied the legal effect of the deed from what it would have had, if it had admitted the payment of the consideration. The difference was that this deed furnished evidence against

the purchaser, and all persons claiming under him, of an admission by the purchaser that the purchase money, as alleged in the deed, was unpaid, which otherwise the party seeking to enforce the lien would have to show by independent testimony,

What, then, are the matters stated in this deed with which the purchasers from Hood are by law charged with notice? As the claim of appellant is based upon the note for the last payment for the land, we may pretermit all reference to the others. The purchasers, then, were charged with notice that Hood had given his individual note to Shields for $9,000, to be paid at the Union Bank, in New Orleans, Louisiana., on the 1st of April, 1862. And had there been, in fact, any such note given for the land, and they had purchased before the lapse of the time for its payment, they would have taken the land with the liability of its being charged with a vendor's lien in favor of the note. But the bill shows that there never was, in fact, any such note given in payment for the land as that described in the deed. The note actually given was a totally different one from that stated in the deed. How, then, can it be said that the deed gave notice of this note, even if there was in equity a lien in its favor, as against the original vendee? If purchasers are at their peril bound to examine the records, is it not equally incumbent upon those who claim the benefit of this rule to see that the record speaks truly, and gives parties examining it notice of the facts of which they should be notified?

Again, when Hood sold the land, more than twelve months had elapsed after, according to the terms of the deed, the last payment was to have been made. Did the record of the deed give notice that the contract had not been fulfilled, and the money paid according to the undertaking of the purchasers? If the deed had acknowledged payment, though in fact nothing had been paid, the vendee could have sold the next day. Why? Because the terms of the deed raised no legal presumption that any part of the purchase money remained unpaid, though, as a matter of fact,

it might be shown that in ninety-nine cases out of a hundred a part of the consideration admitted by the deed to have been paid is in fact paid by the vendee's note, and to secure which the vendor's lien is looked to. Is not the legal presumption equally as strong, after so long a time after the last installment of the purchase money became due, that it had been paid, and that the land was free from liability? By his deed the vendor has notified subsequent purchasers that the land was to be paid for by a particular day; but can he insist that his deed gives notice that he has slept upon his rights for more than a year subsequent to that time, let his vendee remain in the quiet and undisturbed possession of the land, and yet claim that the deed gives notice that the purchase money was unpaid at the time of the sale by his vendee? Certainly this would be an extension of this doctrine of the vendor's lien by a most liberal construction, which, as the Supreme Court of Texas say, should not be done.

It is said, however, that although the deed in such case does not itself give notice that the purchase money is unpaid, it gives notice that the land was sold upon a credit, and this fact should put the purchaser upon inquiry. But why? He is notified that it was sold upon a credit, but he is also notified of the extent and time of the credit, and that this time has long passed, and yet he finds the vendee in the undisturbed enjoyment and possession of the land. But if he must make inquiry, where and to whom must he go for information? In this case the purchasers were assured by the original vendee (Hood) that every dollar of the purchase money had been paid. And it is not controverted, but that he in fact had taken up and held, if he had not destroyed it, the very note for the security of which it is claimed this lien had its existence. Is it possible a party can come into a court of equity and ask the enforcement of a vendor's lien, when by his own admissions he has put the very note under which he claims the lien was secured to him into the hands of his vendee, and thereby enabled him to assure and satisfy the subsequent vendees, who he seeks

to charge with the lien, that the purchase money had been fully paid?

But if the purchasers were put upon inquiry, and should not, as is insisted, have relied upon the information given them by the vendee, to whom should they have gone? To the vendor? Why? The deed notified them that the note after which inquiry was to be made was commercial paper, negotiable and payable in bank in another State. Was it not the legitimate and reasonable deduction from this fact that the note had been put in circulation, and that an inquiry about it of the original vendor would only have furnished the information that he had parted with it, as indeed was the fact, and could not of course tell whether it had been paid or not? Must, under such circumstances, the note be traced through all the various hands through which it may be passed, to ascertain whether it had been paid, or though long past due, if it is still outstanding? The embarrassing results attending such a construction demonstrate the impolicy of its adoption.

5. Will a court of equity enforce the lien unless it appears that no adequate relief can be had at law? The lien of the vendor is not an original, specific, and absolute charge on the land, but a mere equitable right to subject the land to the payment of the purchase money on the failure to collect it on the note or legal contract for its payment. It, therefore, follows, from the very nature of the lien, as well as the general rule, that equity will not interfere when there is a plain and adequate remedy at law, that this objection is fatal to appellant's bill. This seems to be the generally recognized rule by all the decisions, unless in those States where the vendor's lien is treated, not in its true character as "a doctrine of a court of equity," as Judge STORY denominates it, but as an equitable mortgage, which, like a legal mortgage, may be foreclosed, though the mortgagor may have an action at law for his debt. (See 1 Lead. Ca. in Eq., p. 366, and cases cited.) It is needless to say that the decisions of the courts of Texas,

from its peculiar system of jurisprudence, in which equitable and legal rights may be blended in the same suit, can have no application to this question.

6. The silence of both Shields and Bartlett until long after the land had been bought and paid for by Scogin and Hanna, and until large expenditures had been made for improvements upon it, together with the statements of both Shields and Bartlett to Scogin when applied to for information, after he had heard of the note, authorized the decree upon the issue of fact as to the existence of the alleged lien.

Respectfully submitted,

GEORGE F. MOORE,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

December Term, 1872. *No.*

P. DE CORDOVA, APPELLANT,

vs.

MARY HOOD *et als.*, APPELLEES.

Abstract of Case and Points for Plaintiff in Error.

W. G. HALE.

SUPREME COURT OF THE UNITED STATES.

December Term, 1872. *No.* .....

P. DE CORDOVA, APPELLANT,

vs.

MARY HOOD *et als.*, APPELLEES.

Abstract of Case and Points for Plaintiff in Error.

On March 21, 1868, P. De Cordova, as assignee in Bankruptcy of Z. Bartlett, filed a bill in Equity, in the Circuit Court of the United States for the Western District of Texas, against L. M. Hood and Mary Hood, as executors of H. M Hood, Sr., deceased, and against L. G. Scoggin and J. S. Hanna, as purchasers of the land upon which the complainant claimed a lien. [Rec. 1–8.] By an amendment subsequently made, T. C. Hood was substituted as defendant, in place of H. M. Hood. [Rec. 31–34.] The bill alleges in substance that B. G. Shields, on March 4, 1859, conveyed two tracts of land, containing together 1800 acres, in Falls county, in Texas, to H. M. Hood, the decedent, for $27,000, payable as follows: "Four thou-

sand dollars ($4,000) on the 10th day of May next, in the city of New Orleans, for which the said Hood has given me a draft on R. C. Cumings & Co., of said city, payable at that time; five thousand dollars ($5,000) on the first day of January next, for which he has likewise given me a draft on the same house, payable there; nine thousand ($9,000) on the first day of April, eighteen hundred and sixty-one, with interest at the rate of eight per cent. per annum from the 12th day of January, 1860, for which he has executed to me his promissory note, negotiable and payable at the Union Bank, in the city of New Orleans, at the time mentioned; and nine thousand dollars on the first day of April, eighteen hundred and sixty-two, with the same rate of interest from the same time, January 1, 1860, and negotiable and payable at the same Bank in New Orleans." The bill also alleges that as part of the last mentioned payment, due on the first of April, 1862, for the sum of $9,000, a new note was made by H. M. Hood, Sr., on April 1, 1860, payable April 1, 1862, at the said Union Bank in New Orleans, to the order of D. G. Shields, for the sum of $5,015; and the bill claims that taking the original transaction and this note together, there was a vendor's lien reserved to Shields and his assigns for the amount of the last mentioned note, and that said note has not been paid.

The bill further alleges that Shields endorsed this note to the Bankrupt, Z. Bartlett, as follows:

"For value received, I assign, transfer, set over and deliver the within note, with all the equitable and vendor's lien on the land for the purchase money for which it was given to Z. Bartlett.

B. G. SHIELDS."

And that the land thus burthened was sold by H. M. Hood, the decedent, on May 22, 1863, to the defendants, Scoggin and Hanna, with full knowledge, both constructive and actual, that the note before mentioned was given for the purchase money of the land, and that it had not been paid. And the bill prays for judgment on the said note against the executors of H. M. Hood, and for judgment foreclosing the vendor's lien upon the land in question, and an order to sell the same for the payment of the debt. [Rec. 1–7.]

This bill was taken *pro confesso* against Mary Hood and T. C. Hood, at November rules, 1869. [Rec. 39, 40.] Scoggin and Hanna filed a joint and separate answer, April 20, 1869. [Rec. 19–28.] The only substantial defence in this answer, as it turned out at the hearing, is the denial expressed in the tenth paragraph, [Rec. 25,] "that they had any notice whatever, actual, constructive or otherwise, of the existence of any lien whatever upon said land, by reason of said note, or in any other way."

At the hearing, the testimony of Shields, Bartlett, Scoggin, Hanna and other witnesses was read and presented some apparent contradictions, which can, however, be reconciled by a careful examination of the evidence, and as we can do so with more clearness in that portion of this brief containing our argument, we do not deem it necessary to refer to it further in this place.

The Circuit Court, Judge Duval presiding, confirmed the decree *pro confesso*, but dismissed the bill as to the defendants, Scoggin and Hanna, on the ground stated in the decree, "that complainant is not entitled to a decree for the foreclosure of the vendor's lien on the land described in the bill." [Rec. 81, 82.] From this decree the complainant appealed, on the ground that the decree was erroneous, and contrary to the equitable rights of complainant, in dismissing the bill as to the defendants Scoggin and Hanna, and failing to require a foreclosure of the vendor's lien as to them. [Rec. 82.]

The errors upon which the complainant founds his appeal, are: First—That the evidence shows conclusively, that the defendants, Scoggin and Hanna, had constructive and legal notice of the existence of a vendor's lien. Second—That the defendants, Scoggin and Hanna, having paid in Confederate money, are not entitled to the defence

of purchasers for a valuable consideration; and these the appellant assigns for error.

I.

It is evident upon the presentation of this case, that the principal questions in it are as to the existence of a vendor's lien, and as to the knowledge of it by the new purchasers.

The jurisprudence of the State of Texas is derived from the Mexican and Spanish law, and is not based, as is the common law, upon a series of compromises, but is founded upon a deliberate system, which others would do well to imitate. The Partidas [3 P. t. 28 l. 46] say upon this subject, that "if the purchaser shall not have paid the price, or given security or pledges, he must pay, and by such a conveyance a property does not pass to the purchaser."

This is the language of the Supreme Court of Texas in all its decisions.

II.

But we are not left merely to inference, as to the existence of a vendor's lien. The title informs us of it in agreeing to warrant and defend the title upon the payment of the purchase money [Rec., 6], and also, by the action of the defendants Scoggin and Hanna in relation to the subject matter of this

note. For it is clearly proved by the testimony of Shields [Rec. 48–55,] that the note in question was taken after a payment on the last $9,000 note, as a substitute therefor, and without any intention on either part to abandon the lien.

But it is stated in the answers of Scoggin and Hanna that, whatever may have been the understanding with Shields, they had no notice of it; and this necessarily brings forward the discussion of the testimony; and in this I shall confine myself principally to the testimony on the part of the defendants. Messrs. Scoggin and Hanna both say [Rec. 69–78,] that they did not know of the existence of any vendor's lien. And yet, in 1870, they swear, that they paid to Mr. Gurley an amount due upon the preceding $9,000 note, payable at New Orleans on April 1st, 1871, on the alleged ground that after seeing Gurley in regard to the note, "we came to the conclusion that there was no getting around the payment of said note, consequently paid Gurley and took up said note, [Rec. 70.] It is also said that the defendants, Scoggin and Hanna, had no constructive notice of this vendor's lien. If so, why did they pay Gurley the balance due on the first $9,000 note and then refuse to pay our client the balance due upon his note. If it be said that there may be in Texas (which is not the case), a doctrine of novation, that defence is not asserted,

but abandoned by the defendants, by their attempt to show that the original bill asserted a new contract. The testimony of Shields and of Bartlett shows clearly why the new contract was made, and that there was no intention of abandoning the existing lien.

As to what Scoggin and Hanna both say, the Court must remark both the inconsistencies, the determined attitudes, and the contradictions of those persons. They say that they had no knowledge of the existence of a vendor's lien, and yet they say that they paid Gurley the balance on the first $9,000 note in order to get around it. They say of this $5,015 note, that Hood, the decedent, assured them there was nothing to pay upon the land. They also say that they were assured by Hood that he had paid the whole of the purchase money. They state that they examined the County records and saw the conveyance from Shields to Hood, and it clearly appears that they relied alone upon Hood's assurance as to the payment of the purchase money. Now the question is, *why they did not ask Shields himself whether he had been paid in full.* Scoggin testifies that he did so, [Rec. 70,] and that Shields' reply was that he had traded a note to Bartlett and that Scoggin was not to give himself any trouble about it. But Shields [Rec. 53,] positively denies this; and the information, had it been given, ought

merely to have put Scoggin on his guard. But it appears by Scoggin's testimony, that the conversation that he had with Shields was in 1867, four years after he had purchased the property, and it does not appear that he made any enquiry of Shields before the purchase.

III.

The questions in this case may be grouped under two heads:

First: The obligation of the vendor's lien upon Scoggin and Hanna.

Second: Whether they were innocent purchasers for a valuable consideration.

As to the first, there arise two enquiries:

First: Whether there was any vendor's lien reserved, and

Second: Whether Scoggin and Hanna knew of it.

As to the first point, we call the attention of the Court to the peculiar language of the deed from Shields to Hood, as given in evidence [Rec. 47.] where the payments and mode of making them is expressly stated, and it is also agreed by the vendor that "upon the completion of the payment aforementioned, I do bind myself, my executors and administrators, to warrant and to defend the premises to the said Hood, his heirs and assigns, against all persons lawfully claiming the same, or any part thereof;" and to McAlpin vs. Burnett, 19 Texas, 497,

in which case it seems that the assignee of vendee's note was originally ignorant that there was any lien upon the land. In fact, without referring to numerous authorities it is sufficient to say, when the deed discloses that the purchase money was not paid at the time it was executed, a subsequent purchaser from the vendee steps into his shoes and takes the land subject to his obligations.

As to the second point, in regard to notice, we must distinguish between constructive and actual notice. Constructive notice is charged to a party when either from the law of the country or from indications of possible information, it becomes his duty to examine directly as to the facts. Actual notice is that which is either brought home to a man's mind by positive statements, by the exhibition of documents, or even by the assertion of persons whom he may even positively distrust or fail to see the connection of their assertions with the matter in hand.

Constructive notice is a creation of the law, but it rests upon the principle of duty. It is one of the obligations of society which requires citizens, for mutual protection, to resort to those sources of information, which the law has established for the service of all persons concerned in the State. It is not a matter merely of private conscience, variable with the sensibility of men, but it is regulated

by well established principles which control all.

This subject has been several times before this Court, and the inclination of the Court has been, I have no doubt judiciously, not to exact the utmost strictness in regard to either constructive or imperfect actual notice, so as to defeat the claims of an innocent or ignorant purchaser. [6 Wall., 83.]

But the Supreme Court of Texas, in a case which was argued several times and long suspended, has decided that the purchaser was held to the greatest strictness when he had any indication, even imperfect, of an adverse claim. Belden & Gilpin vs. Dowd.

In this case it is clear from the facts, without regard to the frame of the deed, that Scoggin and Hanna were well aware of the existence of the lien. They both say that they enquired at the time of their purchase of Hood, whether he had paid the whole of the purchase money, and that Hood assured them that he had. *Why did they enquire?* If there were no vendor's lien, then it could not matter to them whether the money had been paid or not. And their solicitude afterwards, in their asserted inquiries of Shields and of Bartlett, and in their payment to Gurley of the balance due on the first $9,000 note, because "there was no getting round the matter," shows sufficiently that they all along knew that they were buying a risky

bargain—land burthened with the payment of the purchase money.

Some objections have been made, as appears in the record, as to the claim of the Assignee of the note given for the purchase money of the estate, to avail himself of the vendor's lien. This is settled by Moore vs. Raymond, 15 Texas, 544.

I conclude, then, that there was sufficient notice, both constructive and conceded, on the part of the defendants, to authorize a judgment against them, not personally, but for the foreclosure of the vendor's lien upon the land, and its sale, subject to the judgment.

It seems scarcely necessary, in this view of the subject, to refer to the second ground of error, and I only do so because much of the testimony taken below would otherwise seem inappropriate. There is no dispute as to the fact that Scoggin and Hanna paid Hood in their purchase of the land, in interest-bearing Confederate notes, redeemable in six months after the conclusion of a treaty of peace with the United States; and the question is, whether this was a valuable consideration under the laws of the United States and the principles of equity jurisprudence.

The doctrine of this Court is understood to be, that payment in Confederate Notes, as between the parties is a valid consideration, to support an ex-

of the better title. I do not conceive that the decisions go further than money. A promissory note, however negotiable or available, is not a payment. Property, variable in value, and differently appreciated as to price, is not a consideration; and the reason seems to be, that a Court of Equity, in interposing its plenary and rather arbitrary power, is bound to protect as well the legal rights of the actual owner, as the equitable rights of the subsequent purchaser.

Now the question here is, whether a subsequent purchaser, paying in promissory notes, without actual value, can protect himself against the rightful owner of the property. It will not do to say that he paid in a kind of property that could then have been negotiated. Suppose he had paid in pictures, in jewels, or in lands. These are valuable, but their value depends upon fancy, taste or imagination. In the uncertainty attending considerations of this character, Courts of Equity have uniformly concluded on requiring proof of the actual payment of the money; and whatever may have been the present value of Confederate notes in relation to gold at the time of the alleged purchase, I submit that they cannot be received as a payment of purchase money, any more than the promissory note of the vendee.

W. G. HALE.

In the Supreme Court of the U. S.

DECEMBER TERM, 1872.—No. 142.

DE CORDOVA, *Appellant*,
vs.
HOOD ET AL., *Appellee*.

Appeal from decree of U. S. Circuit Court for Western District of Texas.

Brief of Appellant.

1. A purchaser, with notice, either actual or constructive, that the purchase money under a prior deed, which is a link in his chain of title, has not been paid, takes the property subject to the vendor's lien for such unpaid purchase money.

Sugden on Vendors, Vol. 2, page 527.
Story's Equity Jurisprudence, sec. 396.
Hughes v. Edwards, 9 Wheaton, 489.
Champion v. Brown, 6 Johnson's Ch., 398.
Neel v. Pricket, 12 Texas, 138.
Osborn v. Cummings, 4 Texas, 13.

2. Where a deed shows upon it face, as in this instance, that the property conveyed by it was sold upon credit, the record is sufficient notice to a subsequent purchaser and should have put him upon inquiry as to the payment of the purchase money and the extinguishment of the vendor's lien.

Record, p. 6, Deed from Shields to Hood.
Jenkins v. Eldredge, 3 Story C. C., 181.
Tardy v. Morgan, McLane, 358.
Hinde v. Vattier, 3 McLane, 110.
Godfrey v. Beardley, 2 McLane, 412.
Sugden on Vendors, Vol 2, p. 552, 556, &c.
Hansard v. Hansard, 18 Vesey, Jr., 462.
McAlpine v. Burnett, 19 Texas, 500.
1 Younge & Collier, Ex. 303.
Williamson v. Brown, 15 N. Y., 354.

The purchasers, Scogin and Hanna, by themselves, or their attorney who searched the records for them, had actual notice of the deed from Shields to Hood, and were affected with knowledge of all its contents. This deed showed that the purchase money had not been paid at the time of the execution of the deed, and was not to be paid for several years afterwards. According to their own testimony, (pp. 70, 72, 75, of Record,) they made no other inquiry whatever about the payment of the purchase money by Hood to Shields or his assignees, except of Hood himself, who was interested in concealing that fact from them.

3. As time is not of the essence of a contract, the fact that the time has lapsed, which was limited in the deed for the payment of the purchase money, is no ground whereon to raise the presumption of payment.

A vendor of land, who retains a lien thereon for the purchase-money, has a superior right to that of the vendees, and until the payment of the purchase money they hold the property in subordination to the lien; and it is immaterial that the notes given for the purchase money have become barred by limitations.

Baker v. Ramey, 27 Texas, 52.
Dunlap v. Wright, 11 Texas, 597.

4. The assignment of the note given for the purchase money transferred also the vendor's lien. And a blank indorsement is sufficient to carry the lien, so as to enable the assignee of the note to enforce the lien.

Pinchain vs. Collard, 13 Texas, 333.
Moore v. Raymond, 15 Texas, 554.
McAlpine vs. Burnett, 19 Texas, 497.
Honore vs. Blackwell, 6 B. Munroe, 67.
Brumfield vs. Palmer, 7 Blackford, 227.
Pierce vs. Gates, 7 Blackford, 162.
Parker vs. Kelley, 10 Smedes & Marshall, 184.
Roper vs. McCook, 7 Alabama, 319.
Sugden on Vendor's, vol. 2, p. 336.

A different doctrine has been held in some of the States, to the effect that an assignment of a note given for purchase money extinguished the lien; but it is submitted that this Court must necessarily follow the adjudications of the Texas tribunals in the case under consideration.

5. It may be suggested that the legal remedy should have been exhausted in this case by a separate suit against the executors before recourse had to equity for the enforcement of the vendor's lien. But it has been decided that, though the vendor has a remedy at law, he may enforce his lien in equity in the first instance; and in Texas it is the usual and proper course to embrace the legal and equitable remedy in one suit, as was done in this case.

McAlpine v. Burnett, 19 Texas, 497.
Bradley v. Bosley, 1 Barbour's Ch., 125.

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